



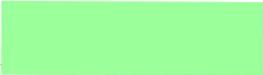
U.S. Citizenship  
and Immigration  
Services

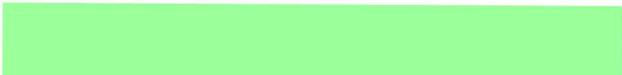
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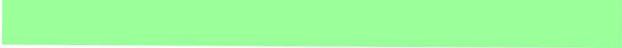


DATE: **AUG 15 2013**

OFFICE: NEBRASKA SERVICE CENTER

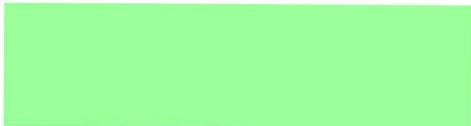
FILE: 

IN RE: Petitioner: 

Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner is a self-described skilled nursing facility. It seeks to permanently employ the beneficiary in the United States as a registered nurse. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). An application for Schedule A designation accompanies the petition. See 20 C.F.R. § 656.5(a) (allowing employers seeking to permanently employ aliens in certain designated occupations to petition for immigrant visas on their behalf without first testing the U.S. labor market and obtaining labor certification from the the U.S. Department of Labor (DOL)).

The director's decision denying the petition concluded that the petitioner failed to submit an application for Schedule A designation pursuant to the applicable regulations. Specifically, the director found that the prevailing wage determination accompanying the petition conflicted with the DOL's prevailing wage rate for the offered position.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. U.S. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

On June 14, 2013, the AAO sent the petitioner a notice of derogatory information and intent to dismiss the appeal, with a copy to counsel of record. The notice informed the petitioner of evidence that it no longer manages nursing homes. See *Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (a petitioner must intend to employ the beneficiary in the offered position). The notice also requested evidence that the petitioner or a "successor-in-interest" remains in business. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986) (explaining the conditions under which a person or entity that acquires the petitioner's business may continue to offer the job opportunity to the beneficiary for immigration purposes).

The notice allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the notice would result in a dismissal of the appeal.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

As of the date of this decision, the petitioner has not responded to the AAO's notice. Failure to submit requested evidence that precludes a material line of inquiry is grounds to deny the petition. See 8 C.F.R. § 103.2(b)(14). Because the petitioner failed to respond to the notice, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.