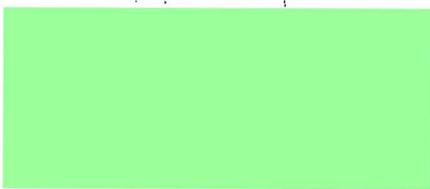


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: Office: TEXAS SERVICE CENTER

FILE:

FEB 21 2013

IN RE: Petitioner:
Beneficiary:

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

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner was a residential remodeling business. It sought to employ the beneficiary permanently in the United States as a construction worker and to classify him as a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it possessed the continuing ability to pay the proffered wage to the beneficiary since the priority date. The director denied the petition accordingly. The petitioner filed a timely appeal.

The AAO issued a Notice of Intent to Dismiss and Derogatory Information (NOID/NDI) to the petitioner and counsel on November 26, 2012, informing them that according to the State of Maryland the petitioner's status was forfeited as of October 30, 2012. The AAO informed the petitioner that if it was no longer an active business, the petition and its appeal to this office have become moot.¹ In which case, the appeal shall be dismissed as moot. Therefore, the AAO requested that the petitioner provide a current certificate of good standing or other evidence demonstrating that the petitioning business is not inactive and had current business activity.

The petitioner and counsel were given 30 days to respond to the NOID/NDI. The AAO specifically alerted the petitioner and counsel that failure to respond to the NOID/NDI would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

While the record reflects that the NOID/NDI mailed to petitioner at its business address was returned by the United States Postal Service as undeliverable, the NOID/NDI mailed to counsel was not returned. More than 30 days have passed since the NOID/NDI was issued, and the AAO has received no response from either the petitioner or counsel. Therefore, the appeal will be dismissed on this basis, as well as those issues specifically raised by the AAO in the NOID/NDI.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

¹ Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.