

(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

JUL 22 2013

FILE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The appeal was dismissed by the Administrative Appeals Office (AAO). Counsel to the petitioner filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion is granted, and the appeal will be dismissed. The petition remains denied.

The petitioner seeks to employ the beneficiary permanently in the United States as an office manager. As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to establish that it had the continuing ability to pay the proffered wage. The AAO determined that the petitioner had failed to establish its continuing ability to pay the proffered wage and further failed to establish that it was still in business and that a subsequent entity was its successor-in-interest. The AAO dismissed the appeal. The petitioner subsequently submitted a Motion to Reopen and Reconsider.

Upon reviewing the case files, the AAO reopened the petition and issued a request for evidence (RFE) on May 1, 2013, requesting evidence of a successor-in-interest relationship between [REDACTED] and evidence demonstrating the petitioner's ability to pay the proffered wage.<sup>1</sup> The priority date is October 17, 2003. The AAO requested the petitioner to provide evidence to establish its ability to pay the beneficiary the proffered wage of \$62,421.00 in 2007, 2008, 2009, 2010, 2011, and 2012.

This office allowed the petitioner 45 days in which to provide the evidence requested as noted above. It is noted that the notice was sent to the petitioner's and to counsel's last known address.

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). Because the petitioner failed to respond to the RFE and failed to provide the evidence requested, the AAO is dismissing the appeal.

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). The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).