(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: JUL 25 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner describes itself as an IT consulting business. It seeks to permanently employ the beneficiary in the United States as a systems analyst II. The petitioner requests classification of the beneficiary 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). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concludes that the beneficiary does not meet the minimum educational requirements as stated in section H of the ETA Form 9089. Beyond the decision of the director, the AAO found that the evidence in the record does not establish that the beneficiary possesses the required experience for the offered position and requested evidence from the petitioner on this basis. The AAO also stated in a Request for Evidence (RFE) that the petitioner must demonstrate that it has been able to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. The AAO also noted a discrepancy in the petitioner's listed addresses for the beneficiary's worksite and requested that the petitioner provide an explanation and pertinent evidence related to the discrepancy in addresses.

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. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

On May 23, 2013, the AAO sent the petitioner a RFE with a copy to counsel. The AAO requested evidence that the beneficiary meets the minimum educational requirements as stated in section H of the ETA Form 9089; that the beneficiary possesses the required experience for the offered position; that the petitioner has had the ability to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence; and that the petitioner provide an explanation and pertinent evidence related to the discrepancy in addresses for the beneficiary's worksite. The RFE informed the petitioner that 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).

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[1] 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 (BIA 1988).

The petitioner did not respond to the AAO's RFE. Since the petitioner failed to submit requested evidence that precludes a material line of inquiry, the petition will be denied pursuant to 8 C.F.R. § 103.2(b)(14). Further, the evidence in the record is not sufficient to establish that the beneficiary meets the minimum educational requirements as stated in section H of the ETA Form 9089; that the beneficiary possesses the required experience for the offered position; that the petitioner has had the ability to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence; and that the petitioner intends to employ the beneficiary as a systems analyst II according to the terms and designated work location of the ETA Form 9089.

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.