



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUL 26 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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,

*Just to  
for*

Ron Rosenberg  
Acting 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 describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as an operations manager. 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). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision concludes that [REDACTED] did not demonstrate the ability to pay the beneficiary the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. The director's decision also concludes that [REDACTED] failed to demonstrate that the beneficiary possessed the requisite education for the position as of the priority date. [REDACTED] appealed this decision to the Administrative Appeals Office (AAO).

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.<sup>1</sup>

The instant petition was filed by [REDACTED] on January 29, 2007. According to public records accessed using Westlaw, the AAO found that [REDACTED] was forfeited/suspended on May 21, 2010. The AAO issued a notice of intent to dismiss/notice of derogatory information to [REDACTED] notifying it of the derogatory information and affording it an opportunity to provide evidence demonstrating that it was a business in good standing in the state of Texas.

On June 28, 2012, the AAO received a response to its notices. The response indicated that [REDACTED] sold [REDACTED] located at [REDACTED] in Houston, Texas, to [REDACTED]. As such, [REDACTED] claims to be the successor-in-

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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 (BIA 1988).

interest to [REDACTED] and also claims to continue operation of the same [REDACTED] business.

On May 24, 2013, the AAO sent the purported successor-in-interest, [REDACTED], a request for evidence (RFE) with a copy to counsel of record. The RFE requested that [REDACTED] fully describe and document the transaction transferring ownership of the predecessor, demonstrating that the job opportunity remains the same as originally offered, and demonstrating that the petitioner and beneficiary are eligible for the immigrant visa in all respects, including whether the successor-in-interest and the predecessor possessed the ability to pay the proffered wage for the relevant periods. The RFE also indicated that [REDACTED] must establish that the beneficiary possessed all the education, training and experience specified on the labor certification as of the priority date. The RFE allowed [REDACTED] 45 days in which to submit a response. The AAO informed [REDACTED], that failure to respond to the RFE would result in a dismissal of the appeal.

As of the date of this decision, purported successor-in-interest has made no substantive response to the AAO's RFE. Counsel for the purported successor-in interest has only requested an extension of time to respond; however, an extension of time is not permitted by regulation. *See* 8 C.F.R. § 103.2(b)(13). 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)(8)(iv).

Additionally, the regulation at 8 C.F.R. § 103.2(b)(13) states the following: "*Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied."

The regulations are clear that failure to respond to a request for evidence *shall* result in the application or petition being considered abandoned and denied. Since the petitioner failed to respond to the RFE, 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.