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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

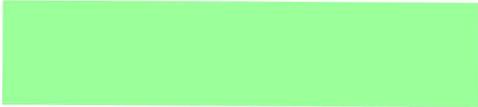


DATE: JUN 14 2013 OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

Rachel NiJorio
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner was a manufacturer of draperies, textiles, and home furnishings. It sought to employ the beneficiary permanently in the United States as a merchandising graphic designer and to classify her as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). As required by statute, the petition is accompanied by an ETA Form ETA 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established its continuing ability to pay the proffered wage to the beneficiary since the priority date. The director further determined that the petitioner had not established that the beneficiary possesses either a United States baccalaureate degree or a foreign equivalent degree as required by the terms of the labor certification. The director denied the petition. The petitioner filed a timely appeal.¹

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.²

On May 18, 2012, the AAO issued a Notice of Intent to Dismiss/Request for Evidence (NOID/RFE) to the petitioner in which the AAO noted that the record contained conflicting information regarding the beneficiary's academic qualifications. Specifically, the AAO noted:

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a Bachelor's degree in Fashion Merchandising/Visual Communications from the [REDACTED] the United Kingdom, completed in 1994.

The record of proceeding contains a copy of the beneficiary's Business and Technical Education Council (BTEC) National Diploma in Design (Display) from the [REDACTED] the [REDACTED] as well as transcripts for a BTEC Higher National

¹ The appeal was accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by the petitioner. The designated attorney on the Form G-28, [REDACTED] is on the list of suspended and expelled practitioners and was disbarred by the State of California. Therefore, the AAO will not recognize the attorney in this proceeding. *See* 8 C.F.R. §§ 1.1(f), 103.2(a)(3), 292.

² 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).

Certificate in Design (Retail) from the [REDACTED]
[REDACTED] The record does not, however, contain a copy of a Bachelor's degree certificate, notwithstanding the beneficiary's assertion to have been awarded this specific degree qualification.

If the beneficiary does not hold an actual bachelor's degree, then she misrepresented her educational accomplishments on the labor certification.

The only substantive response received by the AAO was from the beneficiary in which she stated that she provided all her educational certificates and employment confirmation to the petitioner's former attorney and that they prepared the ETA Form 9089. The beneficiary noted that she simply signed the ETA Form 9089 without reading after it had been approved relying upon the expertise of the petitioner's former attorney to accurately reflect her academic qualifications. The beneficiary declared that she never would have signed the ETA Form 9089 indicating that she possessed a bachelor's degree based upon her education alone and that she knows she possesses a bachelor's equivalent through the combination of her education and experience. The petitioner's former attorney responded with a letter stating that their office was no longer the attorney of record in the matter and there had been no contact with either the petitioner or the beneficiary since 2009. The petitioner's former attorney noted that their office forwarded the AAO's notice to the last known address of both the petitioner and the beneficiary. The petitioner failed to respond.

The AAO issued a second NOID/Notice of Derogatory Information (NDI) to the petitioner on March 27, 2013, informing the petitioner that a review of the official website of the California Secretary of State and Westlaw revealed that the petitioner's status was suspended on May 9, 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.² 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 was given 30 days to respond to the NOID/NDI issued on March 27, 2013. The AAO specifically alerted the petitioner 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).

² 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.



More than 30 days have passed since the last NOID/NDI was issued, and the AAO has received no response from the petitioner. Since the petitioner failed to respond to the NOID/NDI, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

Therefore, the appeal will be dismissed on this basis, as well as those issues specifically raised by the AAO in the NOID/RFE issued on May 18, 2012.

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 summarily dismissed as abandoned.