



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 25 2013

OFFICE: NEBRASKA SERVICE CENTER

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

CC: SUNYOUNG HUR, ESQ
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DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR) dated March 13, 2009, the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The revocation of the approval of the petition will remain undisturbed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner describes itself as a bakery/restaurant. It seeks to permanently employ the beneficiary in the United States as a production supervisor. 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 an ETA 750 labor certification approved by the U.S. Department of Labor. The director's decision revoking the petition's approval concluded that the beneficiary is not eligible for the classification sought.

The record shows that the appeal is properly filed, timely 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 September 7, 2012, the AAO sent the petitioner a notice of intent to dismiss the appeal and request for evidence (NOID/RFE) with a copy to counsel of record. The NOID/RFE notified the petitioner that the record did not establish that the beneficiary was qualified for the proffered position, that it was not clear that a *bona fide* job offer remained open given the results of a United States Citizenship and Immigration Service (USCIS) site visit, or that the petitioner had the continuing ability to pay the beneficiary the proffered wage. The NOID/RFE allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's NOID/RFE.² The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for

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).

² The AAO received a response from attorney [REDACTED] along with Forms G-28 signed by the

denying the petition. See 8 C.F.R. § 103.2(b)(14). As the petitioner failed to respond to the NOID/RFE, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The burden of proof in these proceedings rests solely with the petitioner. 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. The revocation of the approval of the petition remains undisturbed.

beneficiary and a representative of the beneficiary's current employer, [REDACTED]. However, the submission did not include a Form G-28 signed by both [REDACTED] and a representative of the petitioner. Therefore [REDACTED] response will not be considered for these proceedings. As a courtesy, the AAO is sending [REDACTED] a copy of this decision. We note that in [REDACTED] response he asserts that the beneficiary has "ported" to a new employer in accordance with the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) and that the petition is still "approvable" due to the terms of AC21. The AAO does not agree that the terms of AC21 make it so that the instant *immigrant petition* can be approved despite the fact that the petitioner has not demonstrated its eligibility. Furthermore, the AAO notes that we have reviewed the information and documentation submitted by [REDACTED] and finds that the response was unresponsive to the NOID/RFE, failing to provide the information requested by the AAO which precludes a material line of inquiry.