

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



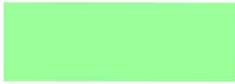
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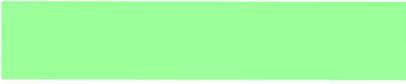
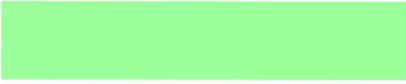
(b)(6)



DATE: JUN 28 2013

OFFICE: TEXAS 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to 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 describes itself as a cellular phone business. It seeks to employ the beneficiary permanently in the United States as a 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 denying the petition concluded that the petitioner had failed to submit initial required evidence demonstrating that the beneficiary was qualified for the proffered position as of the priority date and demonstrating that it had the ability to pay the proffered wage from the priority date onwards.

The record shows that the appeal is properly filed. 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 15, 2013, the AAO sent the petitioner a notice of intent to dismiss (NOID), a request for evidence (RFE), and a notice of derogatory information (NDI). The AAO's NOID/RFE/NDI stated that the beneficiary's experience listed on the labor certification conflicted with information that the beneficiary provided on a previous nonimmigrant visa application. The AAO informed the petitioner that it and the beneficiary appeared to have knowingly and intentionally submitted a false letter pertaining to the beneficiary's employment experience, thus engaging in willful misrepresentation of a material fact. The AAO additionally asked the petitioner to submit evidence demonstrating its ability to pay the proffered wage from the priority date onwards. The NOID/RFE/NDI noted that the petitioner told the AAO's fraud branch that it was no longer in business and that it had no intention of employing the beneficiary permanently. The AAO notified the petitioner that its appeal therefore appeared to be moot. The AAO lastly highlighted that the petitioner's owner told the AAO's fraud branch that the beneficiary was his cousin. The AAO concluded that the petitioner appeared to have sought to procure an immigration benefit for the beneficiary through a willful misrepresentation of a material fact, as the petitioner indicated on the

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).

labor certification that the beneficiary did not have a familial relationship with the petitioner's owners. The AAO informed the petitioner that, unless it could resolve all of these issues, the AAO would make a finding of willful misrepresentation against the petitioner's company and invalidate the labor certification. The NOID/RFE/NDI allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE/NDI 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/NDI. 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). Since the petitioner failed to respond to the NOID/RFE/NDI, 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.