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

(b)(6)

DATE: MAR 07 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:

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, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be summarily dismissed as abandoned pursuant to the regulation at 8 C.F.R. § 103.2(b)(13)(i).

The petitioner owns and operates a Chinese restaurant. It seeks to permanently employ the beneficiary in the United States as a restaurant 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 failed to establish the continuing ability to pay the offered wage since the petition's priority date of August 25, 2006. On June 23, 2010, the AAO dismissed the petitioner's appeal, affirming the director's determination. The AAO also found that the petitioner failed to establish the beneficiary's qualifications for the offered position.

The record shows that the motion is properly filed and meets the requirements for a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2) (motion to reopen must state new facts to be provided and be supported by affidavits or other documentary evidence). With the motion, the petitioner has submitted additional documentary evidence of its ability to pay the offered wage and the beneficiary's qualifications for the offered position.

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 considers all pertinent evidence in the record.

On December 19, 2012, the AAO sent the petitioner a notice of intent to dismiss (NOID) the motion and a notice of derogatory information (NDI), with copies to counsel of record. The NOID/NDI notified the petitioner of evidence from the Ohio Secretary of State's office that another entity, [redacted] now owns and operates the petitioner's restaurant. The NOID/NDI requested evidence that the petitioner continues to own and operate the restaurant, or that a successor-in-interest entity acquired the essential rights and obligations to carry on the petitioner's business. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986) (holding that only a successor to the original petitioner can offer the same job opportunity). The NOID/NDI allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/NDI would result in a dismissal of the motion.

As of the date of this decision, the petitioner has not responded to the AAO's NOID/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). The ownership and operation of the restaurant are material facts because the motion would be moot if the petitioner no longer owns and operates

the restaurant and a successor did not acquire the business. *See Dial Auto Repair Shop*, 19 I&N Dec. at 482-83. Even if the motion was granted and the petition approved, the approval of the petition would be subject to automatic revocation due to the termination of the petitioner's business. *See* 8 C.F.R. § 205.1(a)(iii)(D).

Because the petitioner failed to respond to the NOID/NDI within the allotted amount of time, the motion 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 motion is summarily dismissed as abandoned.