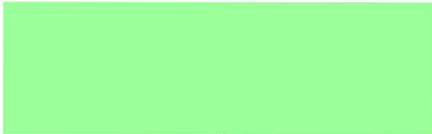


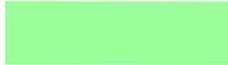


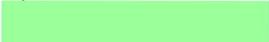
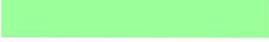
U.S. Citizenship  
and Immigration  
Services

(b)(6)



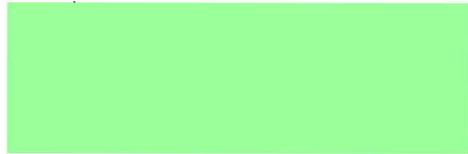
DATE: **MAR 08 2013**

OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

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 (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 dry cleaners and alterations business. It seeks to permanently employ the beneficiary in the United States as an alterations tailor. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). 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 not demonstrated that it had the ability to pay the beneficiary's proffered wage from the priority date onward.

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>

On December 19, 2012, the AAO sent the petitioner a Notice of Intent to Dismiss the appeal (NOID) and Request for Evidence, with a copy to counsel of record. The AAO notified the petitioner that the record of proceeding did not document its ability to pay the beneficiary's proffered wage, specifically that the petitioner had provided a tax return amended after the director notified the petitioner that the tax return it initially provided was insufficient to document its ability to pay the beneficiary's proffered wage. In addition, evidence provided by the petitioner on appeal was insufficient to overcome the grounds for denial, as the petitioner's self-estimate of expenses appeared to fail to account for the petitioner's sole proprietor's household expenses, preventing the AAO from determining the petitioner's ability to pay the beneficiary's proffered wage. Also, the beneficiary's W-2 Wage and Tax statements and resume conflicted with the beneficiary's claims that she had employed the petitioner full-time since 2003. Beyond the director's decision, the AAO also notified the petitioner that it had not established that the beneficiary was qualified for the position offered, and the AAO requested that the petitioner provide evidence that the beneficiary possessed the minimum qualifications for the position offered. The NOID allowed the petitioner 45 days in which to submit a response related to the issues set forth above. The AAO informed the petitioner that failure to respond to the NOID would result in a dismissal of the appeal.

---

<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).

(b)(6)

As of the date of this decision, the petitioner has not responded to the AAO's NOID. 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 AAO's NOID, 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.