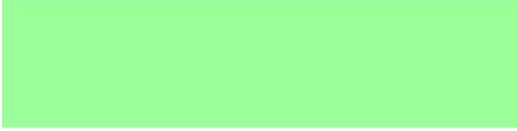




U.S. Citizenship
and Immigration
Services

(b)(6)



MAR 25 2013

DATE:

OFFICE: TEXAS SERVICE CENTER

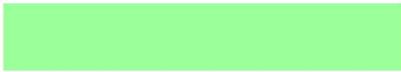
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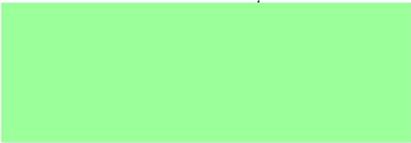
Petitioner:

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, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a convenience store. It seeks to permanently employ the beneficiary in the United States as an assistant 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 concludes that the beneficiary did not meet the minimum requirements of two years of work experience prior to the filing of the Form ETA 750.

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.¹

On January 31, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss the appeal (NOID) with a copy to counsel. The basis for the NOID was the fact that, according to the Texas Secretary of State, the petitioner was not in good standing on January 28, 2013. The AAO requested that the petitioner demonstrate its continued existence, operation, and good standing and submit Forms 941, Employer's Quarterly Federal Tax Return for all quarters over the past three years to demonstrate the petitioner's continued operation, as well as the petitioner's federal tax returns for 2009, 2010 and 2011 to establish the petitioner's continuing ability to pay the beneficiary's proffered wage. The NOID informed the petitioner that it appeared the appeal was moot as the petitioner was not in good standing and that 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).

In a letter dated February 28, 2013, the petitioner responded to the AAO's NOID only to request an extension of time. Counsel did not address the specifics of the AAO's NOID or submit any evidence. No extension of time will be granted. The USCIS regulation at 8 C.F.R. § 103.2(b)(8)(iv) specifies that additional time to respond to a request for evidence or notice of intent to deny may not be granted. The petitioner has not demonstrated that it is still in existence and the instant appeal is

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).

therefore moot.² Additionally, because the petitioner's failure to submit requested evidence precludes a material line of inquiry, the petition will be denied pursuant to 8 C.F.R. § 103.2(b)(14).

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 dismissed as moot.

² Further, as noted above, the director found that the evidence in the record is not sufficient to establish that the beneficiary met the minimum requirements of two years of work experience prior to the filing of the Form ETA 750. As the petitioner has failed to establish its continued, bona fide existence, and the appeal is moot, this issue has not been examined on appeal.