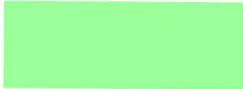


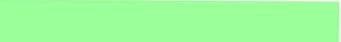
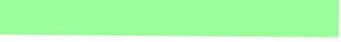


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 06 2013** OFFICE: TEXAS SERVICE CENTER FILE: 

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,

Elizabeth McCormack

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 filed the above-referenced Form I-140, Immigrant Petition for Alien Worker. The petitioner seeks to permanently employ the beneficiary in the United States as an expert in leather importation pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A).

As required by statute, the petition is accompanied by an Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).

The denial decision states that the companies, [REDACTED], and [REDACTED] failed to establish that either is a successor-in-interest to [REDACTED] the company that filed the labor certification underlying the instant petition. The director's decision denying the petition concluded that the petitioner had not demonstrated that it had the ability to pay the 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.¹

On February 28, 2013, the AAO sent the petitioner a request for evidence (RFE) with a copy to counsel of record. The AAO notified the petitioner that the evidence in the record does not establish the organizational structure of the predecessor prior to any transfer, or the current organizational structure of any successor; that the evidence does not establish that the successor acquired the essential rights and obligations of [REDACTED] necessary to carry on the business in the same manner as the predecessor; that the evidence does not establish that the successor is continuing to operate the same type of business as the predecessor; and, that the evidence does not establish that the manner in which the business is controlled by the successor is substantially the same as it was before the ownership transfer.

Therefore, the evidence in the record is not sufficient to establish that [REDACTED] are successors-in-interest to [REDACTED]

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).

Further, in a successor-in-interest case, the petitioner must also establish that the original employer possessed the ability to pay the proffered wage from the priority date until the date the petitioner assumed the original employer's rights and responsibilities. *Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481, 482 (Comm. 1981). The AAO notified the petitioner that there is no evidence in the record to establish that the petitioner possessed the ability to pay the proffered wage from the priority date until another company may have acquired its assets.

The RFE requested that the petitioner submit the required evidence of its ability to pay the beneficiary's proffered wage.

The request for evidence allowed the petitioner 45 days in which to submit a response. The AAO informed the petitioner that failure to respond to the 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 RFE. 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). In addition, if all required initial evidence is not submitted with the application or petition, or does not demonstrate eligibility, USCIS, in its discretion, may deny the petition. 8 C.F.R. § 103.2(b)(8)(ii). The petitioner's evidence of its ability to pay the proffered wage is initial evidence required by regulation. 8 C.F.R. § 204.5(g)(2) (“[a]ny petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage”). Since the petitioner failed to respond to the AAO's request for evidence, the petitioner has failed to establish that it has the ability to pay the proffered wage and also failed to establish that the petitioner is still in business or that it has a successor-in-interest to continue as the petitioner. 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.