

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: **MAY 14 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. After granting the petitioner's motion to reopen and reconsider, the director again denied the petition. The petitioner's appeal is now before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed as abandoned pursuant to the regulation at 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a private school. It seeks to permanently employ the beneficiary in the United States as a "computer class teacher for kindergarten." 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 decisions denying the petition conclude that, as of the petition's priority date, the petitioner failed to demonstrate its continuing ability to pay the proffered wage and the beneficiary's qualifications for the offered position.

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 27, 2013, the AAO sent the petitioner a notice of intent to dismiss the appeal, with a copy to counsel of record.² The notice advised the petitioner that, according to the Corporations and Charities Division of the Washington Secretary of State's office, the petitioner become inactive on November 1, 2010, appearing to render this appeal moot. The notice allowed the petitioner 30 days in which to submit evidence of its continued existence, or of the acquisition of the essential rights and obligations necessary to carry on its business by a "successor-in-interest." See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986) (to continue a job offer for immigration purposes, an entity must demonstrate a successor relationship to the labor certification employer or

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).

² Washington State Bar Association records show that the petitioner's attorney was suspended after the filing of this appeal and is currently ineligible to practice law in Washington State. See http://mywsba.org/default.aspx?tabid=178&RedirectTabid=177&Usr_ID=29692 (accessed April 29, 2013).

(b)(6)

Page 3

the petitioner). The AAO informed the petitioner that failure to respond to the notice would result in dismissal of the appeal.

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

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). Because the petitioner failed to respond to the AAO's notice, the appeal will be summarily dismissed as abandoned pursuant to the regulation at 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.