

(b)(6)

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



DATE: **MAY 15 2013**

OFFICE: TEXAS SERVICE CENTER

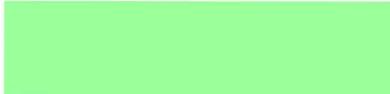
FILE:



IN RE:

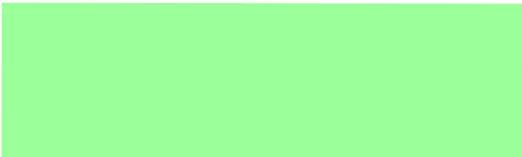
Petitioner:

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

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

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 describes itself as a hair salon. It seeks to permanently employ the beneficiary in the United States as a hair stylist. 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 its continuing 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 14, 2013, the AAO sent the petitioner a request for evidence (RFE) with a copy to counsel of record. The RFE requested a copy of the petitioner's federal tax returns for tax year 2001, 2007, 2008, 2009, 2010, 2011, and 2012 (if available), as well as W-2 Forms issued by the petitioner to the beneficiary. The RFE also requested the following:

- Evidence regarding officers' compensation that the petitioner claims establishes its ability to pay the proffered wage in the form of (1) a sworn statement or affidavit from the officer(s) of the company stating they are willing and able to forego officer compensation, if necessary, from the priority date until the beneficiary obtains lawful permanent residence; and (2) a photocopy of the officer(s)' W-2s from 2006 to 2011, officer(s) personal tax returns, and statement of personal expenses for any year in which the petitioner seeks to rely on officer compensation.
- Evidence that the petitioner intends to employ the beneficiary directly or be the beneficiary's actual employer, including evidence establishing (1) the physical location(s) where the beneficiary will be working; (2) who the beneficiary will be working for, who will pay the beneficiary by tax identification number, and who will

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).

actually control the day to day work activities of the beneficiary; (3) what entity, by tax identification number, will supervise, assign and control the work of the beneficiary; (4) what entity, by tax identification number, owns the work equipment which the beneficiary will use to perform the duties set forth on the labor certification; and (5) whether the salary is set by contract, or is regular and ongoing (the RFE also requested copies of all contracts under which the beneficiary will provide services).

The AAO also noted that the beneficiary appears to be the nephew of the petitioner's owner and requested that the petitioner establish that the position offered constitutes a *bona fide* job offer. The AAO requested that the petitioner submit evidence that it informed DOL of the beneficiary's relationship to the petitioner's owner.

The RFE 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). Since the petitioner failed to respond to the RFE, 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.