

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

[Redacted]

DATE: OFFICE: NEBRASKA SERVICE CENTER
MAY 30 2013

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:

[Redacted]

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 (the director), denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the appeal. The petitioner subsequently filed a motion to reopen an motion to reconsider. 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 hospital. It seeks to permanently employ the beneficiary in the United States as a registered nurse. 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 petition failed to meet the requirements of 20.C.F.R. § 656.40(c) because the petitioner failed to file the instant Form I-140 immigrant petition within the validity date of the prevailing wage determination. On December 3, 2009, the AAO affirmed the director's decision and also found that the posting notice failed to comply with regulatory requirements and the petitioner had also failed to establish its ability to pay the prevailing wage.

The record shows that the motions are properly filed, timely and make 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 motion.¹

On March 28, 2013, the AAO sent the petitioner a notice of intent to dismiss and notice of derogatory information (NOID/NODI) with a copy to counsel of record. The record contains a letter from the petitioner, dated January 19, 2010, stating that the beneficiary had not been employed by the petitioner since May 12, 2008. However, the petitioner did not indicate whether it wished to continue with the motions or withdraw the motion and the underlying petition itself.² The AAO issued the NOID/NODI because the motions appeared to be moot as it appeared that the petitioner no longer employed or intended to employ the beneficiary in the future. The AAO informed the petitioner that if it intended to continue to pursue the motions, it must demonstrate its intent to employ the beneficiary in the proffered position. The NOID/NODI allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/NODI would result in a dismissal of the appeal.

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 The petitioner failed to respond to recent telephonic inquiries made by the AAO.

On April 17, 2013, the AAO received correspondence from the petitioner in which it did not clearly state that it wished to pursue the motions in the instant case. The correspondence merely indicated that the beneficiary was no longer employed by the petitioner and that the petitioner is “not sponsoring her” at this time. While the petitioner submitted a response, the response did not clearly address the queries set forth in the NOID/NODI. 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). As the petitioner failed to respond to the NOID/NODI, 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.