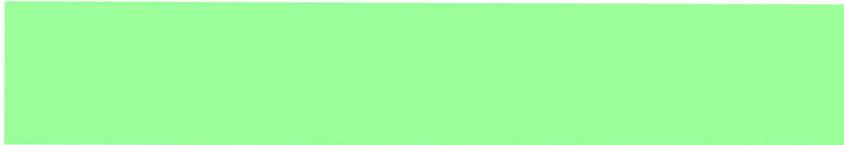




U.S. Citizenship
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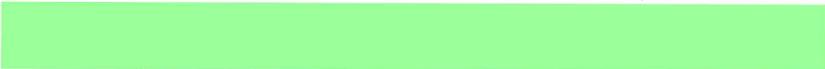


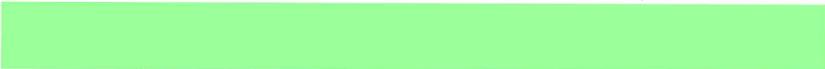
DATE: OCT 11 2013

OFFICE: NEBRASKA 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the petitioner appealed this decision to the Administrative Appeals Office (AAO). On November 14, 2012, the AAO dismissed the appeal. The matter is now before the AAO as a motion to reopen and reconsider its November 14, 2012 decision. The motion will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a supermarket. It seeks to permanently employ the beneficiary in the United States as a meat cutter. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). 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 had not established that it had the ability to pay the beneficiary's proffered wage from the priority date onward. The AAO similarly held that the petitioner had not established its ability to pay the beneficiary's proffered wage as of the priority date. The AAO also held that the petitioner had not established that the beneficiary met the experience requirements of the labor certification.

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 July 23, 2013, the AAO sent the petitioner a request for evidence (RFE) with a copy to counsel of record, requesting that the petitioner submit the following evidence:

- Copies of the petitioner's annual reports, federal tax returns, or audited financial statements for 2008 through 2012, as evidence of the petitioner's ability to pay the beneficiary's proffered wage for these years.
- Copies of any Forms W-2 or Forms 1099-Misc that the petitioner issued the beneficiary from 2001 to 2012.
- Documentation regarding the petitioner's reputation in the industry and the occurrence of any uncharacteristic business expenses or losses from 2001 to 2012.
- Documentation verifying the beneficiary's employment with [REDACTED] in Mexico, such as pay records or government ministry records.

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).

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 AAO's RFE, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.