



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 09 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as an Other Worker Pursuant to Section 203(b)(3) of the
Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

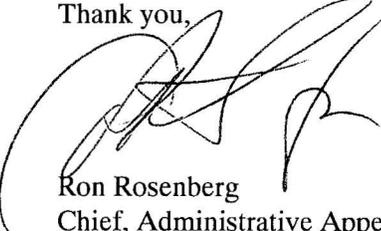
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. 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 skilled nursing facility. It seeks to permanently employ the beneficiary in the United States as a nursing assistant. The petitioner requests classification of the beneficiary as an other worker pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). 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 the beneficiary met the minimum requirements of the proffered position as of the priority date.

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 June 13, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss the appeal (NOID). The AAO notified the petitioner that the evidence in the record was not sufficient to establish that the beneficiary possesses a valid, unexpired Certified Nursing Assistant certificate and that it intended to dismiss the appeal on this basis unless the petitioner established that the beneficiary possesses a valid, unexpired Certified Nursing Assistant certificate. The AAO found that the record did not include evidence that the beneficiary has a high school diploma from the United States, and therefore, the petitioner has failed to show that the beneficiary had the minimum education required in H.4. The AAO noted issues with the experience letters in the record and requested that the petitioner submit additional evidence related to these letters to establish that the beneficiary obtained the full six months of experience in the position offered.

The AAO stated that the petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In addition, the AAO noted that the petitioner had filed multiple I-140 petitions on behalf of other beneficiaries and that it must establish that it has the ability to pay the proffered wages to each beneficiary. *See Matter of Great Wall*, 16

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).

I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. §204.5(g)(2).

The AAO also noted an inconsistency with the petitioner's name and requested evidence to resolve this inconsistency.

The NOID allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's NOID. 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 NOID, 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 dismissed.