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)

[redacted]

Date: SEP 10 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,

Rachel M Florio for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now on appeal before 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 is a hotel. It seeks to employ the beneficiary permanently in the United States as a senior sales manager. The petitioner requests classification of the beneficiary as a professional pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).[1] As required by statute, the petition is accompanied by a labor certification approved by the United States Department of Labor (DOL).

The director's decision denying the petition concluded that the petitioner had not established that the beneficiary possesses either a United States baccalaureate degree or a foreign equivalent degree as required by the terms 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.[2]

On May 31, 2013, the AAO sent the petitioner a Request for Evidence (RFE). The RFE asked the petitioner to submit evidence establishing that the beneficiary possessed the education required by the labor certification as of the priority date. The RFE also asked the petitioner to submit evidence establishing the beneficiary possessed the experience required by the labor certification as of the priority date. 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).

Beyond the decision of the director,[3] the AAO finds that the evidence in the record does not establish that the beneficiary possesses the required experience for the offered position. The petitioner must

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[1] Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] 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).

demonstrate that the beneficiary possessed all of the requirements stated on the labor certification as of the October 9, 2008 priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The AAO noted in the RFE that Part H.14. of the ETA Form 9089 states that the offered position requires:

> Eighteen months of experience supervising the work of other Hotel employees including supervisory personnel within the Hotel Sales Department; eighteen months of experience managing Hotel Sales Department budget operations, including forecasting, scheduling, and budgets; and, eighteen months of experience coordinating Hotel Sales Department operations with other Hotel Managers and Department Heads. Any suitable combination of education, training, and experience is acceptable."

Part K of the labor certification states that the beneficiary qualifies for the offered position based on experience as: a corporate sales manager with the [redacted] in Santa Clara, California from July 19, 2004 to December 15, 2005; a sales coordinator with the [redacted] in San Francisco, California from September 29, 2003 to July 16, 2004; a sales associate with [redacted] in Scottsdale, Arizona from September 20, 2002 to September 26, 2003; a sales manager with [redacted] in Toronto, Canada from July 15, 2002 to September 19, 2002; and a sales and catering manager with [redacted] in Millville, New Jersey from October 11, 2001 to February 28, 2002. No other experience is listed.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
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> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The record contains: an experience letter from [redacted], General Manager, on [redacted] Millville letterhead stating that the company employed the beneficiary as a sales and catering manager from October 2, 2001 to February 28, 2002; an experience letter from [redacted] Manager, Network Support, on [redacted] letterhead stating that the company's

[3] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

contract with the beneficiary as an associate was valid from January 2003 to September 2003; an experience letter from Human Resources Coordinator, on letterhead stating that the company employed the beneficiary as a sales and marketing coordinator from September 29, 2003 to July 16, 2004; and an experience letter from , General Manager, on letterhead, stating that the company employed the beneficiary as a sales manager from July 19, 2004 to December 14, 2005.

However, according to Part K of the labor certification, the beneficiary's beginning date of employment with was September 20, 2002 and not January 2003 as stated on the letter from It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner failed to resolve the discrepancies regarding the date the beneficiary began his employment with

In addition, none of the letters discussed above state that the beneficiary had the specific skills or other requirements listed on the labor certification including: 1) experience supervising the work of other hotel employees including supervisory personnel within the hotel sales department; 2) experience managing hotel sales department budget operations, including forecasting, scheduling, and budgets; or 3) experience coordinating hotel sales department operations with other hotel managers and department heads.

Accordingly, the AAO finds that the petitioner failed to establish that the beneficiary possessed the experience required by the labor certification by the priority date.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.