



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: SEP 20 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

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:

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, revoked the immigrant visa petition on October 19, 2012, 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 Chinese restaurant. It seeks to permanently employ the beneficiary in the United States as a cook – specialty food. 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 revoking the petition concluded that there was not a *bona fide* job offer from the petitioner which was open to all qualified U.S. citizens.

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 19, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss and Derogatory Information (NOID) with a copy to counsel of record. The AAO stated that, according to the Illinois Secretary of State, the petitioner's status was listed as "Not Good Standing." A copy of the status report was attached to the NOID. 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.

On August 19, 2013, counsel submitted a letter requesting an extension to provide evidence of the petitioner's good standing. Counsel asserts that the petitioner is in the process of securing a release from the Illinois Department of Revenue and is prepared to file a Reinstatement Application. Counsel asserts that the petitioner anticipates the Illinois Secretary of State to issue a Certificate of Good Standing by September 13, 2013.² No evidence was submitted in support of counsel's assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter*

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 Illinois Secretary of State now indicates the petitioner's status as "DISSOLVED." *See* <http://www.ilsos.gov/corporatellc/CorporateLlcController> (accessed September 19, 2013).

of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additional time to respond to a request for evidence or notice of intent to deny may not be granted. *See* 8 C.F.R. § 103.2(b)(8)(iv). The petitioner's response to a NOID must be complete upon filing and submitted within the time provided. *See* 8 C.F.R. § 103.2(b)(11). 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 substantively 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.