



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **SEP 27 2013** OFFICE: **NEBRASKA SERVICE CENTER** 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:

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 and dismissed as moot, pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes its business as software development and data entry. It seeks to permanently employ the beneficiary in the United States as a computer software applications engineer. 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 (DOL).

The director's decision denying the petition concluded that the petitioner had not established its ongoing ability to pay the beneficiary the proffered wage.

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

After review of the filing on appeal, the AAO noted that it appeared that there was a familial relationship between the beneficiary and the petitioner's owner. The AAO issued a request for evidence and notice of derogatory information (RFE/NDI) to the petitioner and counsel of record on August 3, 2010. The RFE/NDI notified the petitioner that given the apparent relationship between the petitioner and the beneficiary, it appeared that the petitioner had misrepresented information on the labor certification. Review of the petitioner's response to the RFE/NDI and the evidence in the record suggest that the beneficiary is the petitioner's owner's niece and that this familial relationship was not disclosed to the DOL during the labor certification process. Accordingly, the AAO referred the case to the DOL for review and issued an abeyance notice on January 11, 2011, informing the petitioner that the appeal would be held in abeyance until the DOL made its final determination. The DOL has notified the AAO that the labor certification in this case has been revoked.

On August 1, 2013, the AAO issued a notice of intent to dismiss the appeal (NOID) to the petitioner and counsel of record, informing the petitioner that the underlying labor certification had been revoked by the DOL. The NOID stated that as the instant Form I-140 petition is no longer supported by an approved labor certification, the petition must be denied. See 8 C.F.R. § 204.5(i)(3). The NOID notified the petitioner that if the Form I-140 is no longer supported by an approved labor

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).

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certification, issued on behalf of the beneficiary, the issues raised on appeal have become moot and afforded the petitioner 30 days to respond.

As of the date of this decision, the petitioner has not responded to the AAO's NOID. Therefore, the appeal will be summarily dismissed as abandoned. 8 C.F.R. § 103.2(b)(13)(i). Further, as the instant Form I-140 is no longer supported by an approved labor certification, the appeal will be dismissed as moot.

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.