

(b)(6)

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

DATE: APR 09 2014

OFFICE: NEBRASKA SERVICE CENTER FILE

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as 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.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based petition was dismissed by the Director, Nebraska Service Center (director). The director dismissed a subsequent motion to reopen and motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the case for further adjudication.

The petitioner is an alteration shop. It seeks to employ the beneficiary permanently in the United States as an alteration tailor. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director dismissed the Form I-140, Immigrant Petition for Alien Worker based on abandonment by the petitioner. The director also dismissed the petitioner's motion, noting that "discrepancies were found surrounding the Notice of Appearance and the address on record."

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the Form ETA 750 lists the petitioner's actual address and location where the alien will work. Part 1 of the Form I-140 lists the petitioner's address as its former counsel's location. The director issued a Notice of Intent to Deny (NOID) on April 16, 2013, using an address that appears to have been neither the petitioner's address as stated on the labor certification, nor its current counsel's address.<sup>1</sup> A subsequent copy of the NOID was sent to the same address with a date of May 16, 2013 appearing on the bottom of the document.<sup>2</sup> The director denied the Form I-140 on May 30, 2013, determining that the petitioner had not responded to the NOID within the allotted 30 days.

The petitioner, through counsel, filed a motion to reopen and reconsider, asserting that the director's decision to deny the petition was incorrect because the time had not expired in which to submit a response and maintaining that the NOID had been sent to the wrong address. The director dismissed the petitioner's motion to reopen and reconsider, noting that discrepancies had been found related to the Notice of Appearance and the address on record.

Upon review of the record, the AAO has determined that the NOID conveyed confusing dates from which to calculate the response due from the petitioner. Further, it was not sent to the petitioner's address, nor to counsel's address. The director did not provide any detail as to the discrepancies mentioned in his final decision, which caused the NOID to be sent to the listed address. As such, the AAO concludes that May 16, 2013 must be used as the beginning date from which the 30-day (plus 3

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<sup>1</sup> Based on a G-28, Notice of Entry of Appearance as Attorney or Accredited Representative dated March 10, 2011.

<sup>2</sup> The number "6" of the May 16, 2013 date is in cursive. The remaining characters are typewritten.

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*NON-PRECEDENT DECISION*

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days if mailed) deadline would be calculated. Therefore, the director's final decision issued on May 30, 2013 was premature and will be withdrawn.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to continue with the adjudication of the case. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.