

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)

DATE: **APR 15 2014** OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 an oil and gas engineering company. It seeks to permanently employ the beneficiary in the United States as an engineer III (riser). 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). 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 was not the beneficiary's intended employer. The director also questioned whether the petitioner had the ability to pay the proffered wage to the beneficiary.

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 February 21, 2014, the AAO sent the petitioner a Notice of Intent to Dismiss the appeal (NOID).² The AAO raised concerns whether the record established that the petitioner was the beneficiary's intended employer and whether the petitioner has had the continuing ability to pay the proffered wage from the priority date of September 22, 2009. 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.

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 AAO also would consider this appeal as improperly filed because the attorney who signed the I-290B, Notice of Appeal failed to submit a new Form G-28, Notice of Entry of Appearance as Attorney or Representative. This requirement applies to all appeals filed on or after March 4, 2010. *See Fed. Reg.* 5225 (Feb. 2, 2010). The AAO sent a facsimile request to the attorney, dated January 24, 2014, advising that a new fully executed Form G-28 authorizing the attorney to represent the petitioner must be submitted within 15 calendar days of the date of the notice or the appeal. Failure to submit the new Form G-28 would result in the rejection of the appeal as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1). No new Form G-28 was received by this office.

As of the date of this decision, the petitioner has not responded to the AAO's NOID.³ 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.

³ The AAO acknowledges that it received correspondence suggesting that the petitioner wished to withdraw the appeal. The letter, however, was signed by an attorney who had failed to submit a new Form G-28 on appeal, and, therefore, could not be considered an authorized representative of the petitioner