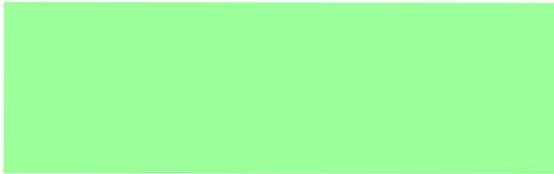




U.S. Citizenship
and Immigration
Services

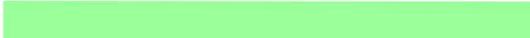
(b)(6)



DATE: **AUG 14 2014**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

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 pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner seeks to classify 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 an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is August 13, 2008, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director denied the petition, finding that the petitioner failed to disclose a familial relationship between the petitioner's sole shareholder and the beneficiary and that a *bona fide* job offer did not exist. The director also invalidated the petitioner's labor certification pursuant to 20 C.F.R. § 656.30(d). The petitioner appealed this decision to our office.

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.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We may consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On April 17, 2014, we sent the petitioner a Request for Evidence (RFE), with a copy to counsel of record. We advised that the evidence in the record on appeal was insufficient to document that the beneficiary possessed the minimum requirements for the position offered, as defined by the terms of the labor certification. Specifically, the evidence in the record failed to show that the beneficiary possessed the experience required for the position. We requested that the petitioner document its ability to pay the proffered wage to the beneficiary, as the record of proceeding lacked evidence of the petitioner's ability to pay the proffered wage for the years 2009 to 2013. Further, we notified the petitioner that USCIS records indicated that the petitioner had filed immigrant petitions for multiple beneficiaries, and that the petitioner must document the wages offered to those beneficiaries, and its ability to pay those beneficiaries' wages in addition to the instant beneficiary's proffered wage.

The RFE allowed the petitioner 45 days in which to submit a response. We informed the petitioner that failure to respond to the RFE 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).

As of the date of this decision, the petitioner has not responded to our 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).

The director's decision will remain untouched; the labor certification shall remain invalidated, and the petition shall remain denied.

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 summarily dismissed.