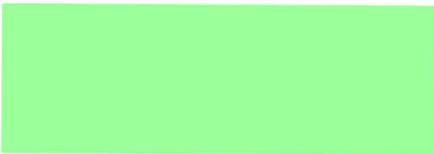
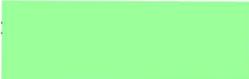


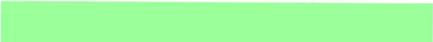
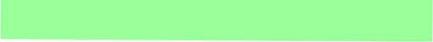


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 03 2014** OFFICE: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a 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 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, Texas 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 a pharmaceutical company. It seeks to permanently employ the beneficiary in the United States as a project manager. The petitioner requests classification of the beneficiary as a professional 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 denying the petition concluded that the petitioner did not establish that it had the continuing ability to pay the proffered wage of \$42.81 per hour (\$89,044.80 per year based on a 40-hour work week) from the priority date of January 8, 2009 onward. On appeal, the petitioner asserts that it is a [REDACTED] of [REDACTED]

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.<sup>1</sup>

On March 25, 2014, we sent the petitioner a notice of intent to dismiss and request for evidence (NOID/RFE) with a copy to counsel of record. We stated that the record does not establish that the petitioner has the ability to pay the proffered wage from the priority date onward. In our NOID/RFE, we requested the petitioner's annual reports or audited financial statements, and its state tax returns, for 2009, 2010, 2011 and 2012; and IRS Forms W-2 or 1099 issued to the beneficiary by the petitioner for any relevant year from the priority date onward.<sup>2</sup> The NOID/RFE allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID/RFE would result in a dismissal of the appeal.

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

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<sup>1</sup> 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).

<sup>2</sup> We also stated that if the petitioner is no longer a [REDACTED] the petitioner could alternatively submit its federal tax returns.

(b)(6)

*NON-PRECEDENT DECISION*

Page 3

NOID/RFE, 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.