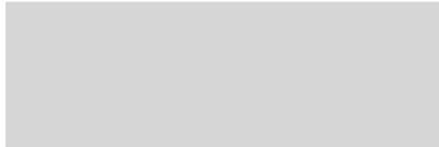


(b)(6)

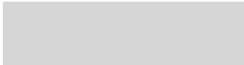
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



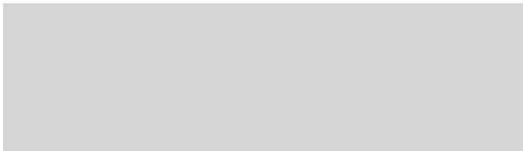
DATE: **AUG 27 2015**

FILE #:
PETITION RECEIPT #: 

IN RE: Petitioner:
Beneficiary: 

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

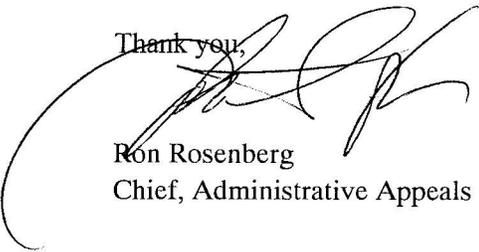
ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Form I-290B, Notice of Appeal or Motion, **within 33 days of the date of this decision**. The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the Director) 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, an individual restaurant owner, seeks to permanently employ the Beneficiary in the United States as a mechanic as a skilled worker or professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹ The petition is accompanied by a labor certification approved by the U.S. Department of Labor (DOL).

The Director's decision revoking approval of the petition concluded that there was no *bona fide* job offer as the Petitioner admitted to filing the Form I-140 immigrant petition at the behest of the Beneficiary, a friend; the Beneficiary paid all fees associated with the filing; and there was never any intent to employ the Beneficiary as he had his own business.²

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 consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.³

On June 19, 2015, we sent the Petitioner a notice of intent to dismiss (NOID) with a copy to counsel of record. We noted that there was no *bona fide* job offer based on the relationship between the Petitioner and the Beneficiary and that the Petitioner did not have the ability to pay the proffered wage. We requested additional information and evidence regarding the Petitioner's and Beneficiary's intent once the immigrant petition was approved, whether the job opportunity was open to all U.S. workers. We also requested information related to Petitioner's ability to pay the proffered wage from the 2007 priority date onwards and information related to the Petitioner's other sponsored workers. Without such information, we are unable to conclude that the petitioner has the ability to pay the beneficiary's proffered wage. The NOID allowed the Petitioner 30 days in which to submit a response to the forgoing issues. We informed the Petitioner that, if he did not respond to the NOID, we may dismiss the appeal.

As of the date of this decision, the Petitioner has not responded to the NOID. Not submitting requested evidence that precludes a material line of inquiry is grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Since the Petitioner did not respond to the NOID, the appeal will be

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² The Director had previously issued a notice of intent to revoke (NOIR).

³ 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).

summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i). Additionally, as the Petitioner has not submitted any evidence related to the Petitioner's ability to pay the proffered wage, or on the question of the Beneficiary's relationship with the Petitioner and whether the job opportunity was open to U.S. workers, we cannot determine whether the Petitioner has the ability to pay the proffered wage or that the labor certification represents a valid job opportunity.

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.