



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 21 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker 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:

INSTRUCTIONS:

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 Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (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, Texas 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 describes itself as a container services business. It seeks to permanently employ the beneficiary in the United States as a mechanic. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ The petition is accompanied by a labor certification approved by the U.S. Department of Labor (DOL).

The director's decision denying the petition concluded that the petitioner had not established that the beneficiary possessed the minimum requirements of the labor certification by the priority date, specifically that the beneficiary did not establish that he had the required two years of experience as a mechanic by the time of the priority date.

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.²

On April 21, 2015, we sent the petitioner a notice of intent to dismiss and notice of derogatory information (NOID/NDI) with a copy to counsel of record. We noted that there were multiple inconsistencies between the instant labor certification, a labor certification previously filed on behalf of the beneficiary, experience letters, public information and the beneficiary's Form G-325A Biographical Information sheet filed with his Form I-485, Application to Register Permanent Residence or Adjust Status and therefore the petitioner did not establish that the beneficiary was qualified for the position offered. We requested additional information regarding the the petitioner's ability to pay the proffered wage. We also notified the petitioner that there may be a familial tie between its owner and the beneficiary raising a question about the bona fide nature of the position. The NOID/NDI allowed the petitioner 30 days in which to submit a response to the forgoing issues. We informed the petitioner that, if it did not respond to the NOID/NDI, we may dismiss the appeal.

As of the date of this decision, the petitioner has not responded to the NOID/NDI.³ Not submitting requested evidence that precludes a material line of inquiry is grounds for denying the petition.

¹ Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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.

² 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).

8 C.F.R. § 103.2(b)(14). Since the petitioner did not respond to the NOID/NDI, the appeal will be 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 inconsistencies outlined in the beneficiary's experience, the petitioner's ability to pay the proffered wage, or on the question of the beneficiary relationship with the petitioner's owner, we cannot determine that the beneficiary meets the qualifications of the certified labor certification or whether 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.

³ On May 18, 2015 the petitioner requested an additional 30 days in which to submit a response to the NOID/NDI. The regulation at 8 C.F.R. § 103.2(b)(8)(iv) provides that a NOID will indicate the deadline for response, but that the maximum response time may not exceed thirty days. Additional time to respond to a NOID may not be granted. While additional time to respond may not be granted, we note that over 60 days has elapsed from the petitioner's request and over 90 days from the date of NOID/NDI issuance, and no response has been submitted.