

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**



D2

[REDACTED]

Date: **OCT 18 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[REDACTED]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 visa petition the petitioner stated that it is a real estate remodeling and motel management firm. To employ the beneficiary in what it designates as a general manager/supervisor/caretaker position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Noting that state corporate records indicated that the petitioner's corporate status had been administratively dissolved, the AAO issued a request for evidence (RFE), dated August 17, 2012, in which it requested evidence demonstrating that the petitioner is in good standing and continues to do business in the State of Tennessee.

The petitioner failed to respond to the AAO's request.¹

A petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons if a petitioner or applicant fails to respond to a request for evidence or a notice of intent to deny by the required date. 8 C.F.R. § 103.2(b)(13)(i). In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE could result in dismissal. 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).

Because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal and summarily denying the petition as abandoned. The remaining issues in this proceeding are thereby moot.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

ORDER: The appeal is dismissed. The petition is summarily denied as abandoned.

¹ On September 18, 2012, the AAO received a letter from counsel, dated September 12, 2012, in which he requested an extension of time to respond to the RFE. Unfortunately, the regulations prohibit the AAO from granting an extension of the 33-day response period provided. Specifically, 8 C.F.R. 103.2(b)(8)(iv) states in pertinent part that "[a]dditional time to respond to a request for evidence or notice of intent to deny may not be granted."

Further, as this September 12, 2012 letter was clearly a request to extend the time in which to respond instead of a response itself, it may not and will not be considered a response to the RFE or a request for a decision on the record. Lastly, as of the date of this decision, approximately one month after counsel's extension request was received by the AAO, no additional correspondence has been received from counsel or its client regarding this matter. The record will therefore be considered complete as currently constituted.