(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: APR 0 2 2013 OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

SELF-REPRESENTED

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be summarily denied as abandoned.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on October 17, 2011. On the Form I-129 visa petition, the petitioner describes itself as a physical therapy clinic and wellness center established in 1999. In order to employ the beneficiary in what it designates as a physical therapy aide/trainer position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation 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 February 2, 2012, the director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner filed an appeal with the AAO on March 5, 2012. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that all evidentiary requirements were satisfied.

The AAO conducted a preliminary review of the record of proceeding and determined that the petitioner failed to establish that the beneficiary would be paid the prevailing wage for the alleged occupational classification in the area of employment. On January 4, 2013, the AAO sent a request for evidence (RFE) to the petitioner. The RFE noted that (1) the petitioner filed a Labor Condition Application (LCA) in support of the Form I-129 petition that indicated that the beneficiary would be employed under the occupational category of Physical Therapy Aides – SOC (ONET/OES) code 31-2022.00 for a Level I position in Bucks County (Richboro, PA); (2) the correct prevailing wage for this position was $10.87 per hour at the time the instant petition was filed; and (3) the petitioner indicated that the beneficiary would be paid $10.05 per hour, an amount below the prevailing wage level for the occupational classification in the area of intended employment.

The AAO reminded the petitioner that under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. *See* section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A). The AAO requested that the petitioner provide evidence to establish that the instant I-129 petition is supported by a valid LCA, as required by the regulation at 20 C.F.R. § 655.705(b). The petitioner was afforded 30 days from the date of the RFE, plus three days for service by mail, to respond with the requested evidence. The petitioner failed to provide a response to the RFE within the specified period (or thereafter).

In the RFE, the AAO provided notice to the petitioner that, pursuant to the regulation at 8 C.F.R. § 103.2(b)(13), a petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons if a petitioner fails to respond to a request for evidence by the required date. The AAO further advised the petitioner that 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).

As 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.

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