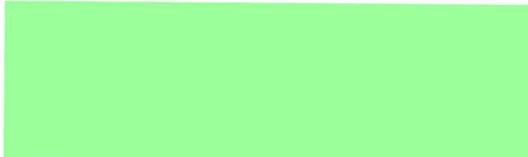


(b)(6)

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 15 2013**

Office: CALIFORNIA 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Michael T. Kelly

1a Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied, on each of two independent grounds, that is: (1) for abandonment and (2) because of the petitioner's failure to provide requested evidence that precluded a material line of inquiry.

On the Form I-129 visa petition, the petitioner describes itself as an information technology services business with 21 employees, established in 2006. In order to employ the beneficiary in what it designates as a system analyst position, the petitioner seeks 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).

The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate: (1) the existence of an employer-employee relationship between the petitioner and the beneficiary; and (2) that the proffered position qualifies for classification as a specialty occupation.

The petitioner filed the instant appeal on July 24, 2012. While conducting a preliminary review of the record of proceeding, the AAO found that the signature on a Statement of Work appears to have been photocopied from another Statement of Work. The AAO issued a request for additional evidence (RFE) with regard to this matter on June 21, 2013. The petitioner was afforded a period of thirty days during which to respond. To date, the AAO has received no response.

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 or a notice of intent to deny by the required date. 8 C.F.R. § 103.2(b)(13)(i). Additionally, 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).

In the RFE, the AAO specifically notified the petitioner that failure to respond to the RFE could result in summary denial of the petition as abandoned. The petitioner was also put on notice that failure to provide evidence requested in the RFE would preclude the AAO's pursuit of a material line of inquiry relevant to the appeal.

Thus, because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal on each of two separate and independent grounds. The appeal is dismissed because the petition must be summarily denied as abandoned. Also, the AAO is dismissing the appeal for the additional reason that the petition must also be denied on the separate and independent basis that the petitioner's failure to respond to the RFE precluded the AAO from pursuing a material line of inquiry. Each and both of these factors render the appeal moot.

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.