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

U.S. Citizenship
and Immigration
Services

DATE: JUN 18 2013 OFFICE: VERMONT 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center. On the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in music and arts training, academic tutorial, and homework assistance for students in Pre K to Grade 8 that was established in 2006. In order to employ the beneficiary in what it designates as a teacher 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).

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. Counsel submitted a Notice of Appeal or Motion (Form I-290B) on September 17, 2012. Upon a preliminary review of the record of proceeding, the AAO found that the signatures in the record of proceeding for the petitioner's representative, [REDACTED] are visibly different throughout the record of proceeding.¹ The AAO issued a Request for Evidence (RFE) on April 19, 2013. The petitioner failed to respond to the AAO's request.²

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 would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested

¹ The regulation at 8 C.F.R. § 292.4(a) provides (emphasis added):

An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. *The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. . . .*

Furthermore, the regulation at 8 C.F.R. § 103.2(a)(2) states that a petitioner must sign his or her benefit request. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. *Id.*

² Routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address. 8 C.F.R. 103.8(a)(1)(i). Petitioners who have filed an application or petition with USCIS but have not yet received a decision (a "pending" case) should notify USCIS of any change of address as soon as possible after moving. The AAO sent the RFE to the petitioner and to its counsel. The notice that was sent to the petitioner was returned as undeliverable. The post office indicated that there was no forwarding address. A review of USCIS systems indicates that the petitioner did not provide a new address to USCIS.

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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.

ORDER: The appeal is summarily dismissed as abandoned.