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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: **MAY 24 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,

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 dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a banquet hall, lodging and boarding business established in 2003. In order to employ the beneficiary in what it designates as a banquet manager 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, 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. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

On October 4, 2012, the AAO sent a Request for Additional and Missing Evidence to the petitioner. The AAO asked the petitioner to provide a valid Labor Condition Application with the correct wage certified on or before May 20, 2010. The petitioner was afforded 33 days to respond to the request.

The AAO did not receive a response to the request. However, the AAO recognizes that the petitioner and its counsel may have been affected by Hurricane Sandy and been unable to obtain documentation from the affected areas or may have been unable to timely response to the request. The regulation at 8 C.F.R. § 103.2(b)(8) does not permit the extension of time within which the petitioner may submit evidence in response to the Request for Additional and Missing Evidence. Accordingly, the AAO issued a second request on February 4, 2013 to provide the petitioner and its counsel with another opportunity to respond. The petitioner was afforded 87 days to respond to the second request.

The petitioner did not respond within the 87-day period allowed in the request, or any time since then. If a petitioner fails to respond to a request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. See 8 C.F.R. § 103.2(b)(13)(i). As further provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

As the petitioner has not responded, the petition is deniable under the regulatory provisions cited above.¹ Accordingly, the appeal will be dismissed, and the petition will be summarily denied as abandoned and denied due to the failure to submit requested evidence that precludes a material line of inquiry, making any remaining issues in this proceeding moot.

¹ If the petitioner was affected by Hurricane Sandy and was unable to provide the requested documentation, please provide an affidavit or unsworn declaration that the requested documents could not be obtained from the affected area.

ORDER: The appeal is dismissed. The petition is summarily denied as abandoned and denied due to the failure to submit requested evidence that precludes a material line of inquiry.