



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 14 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

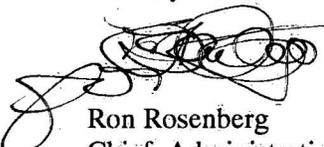
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

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,


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. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a 46-employee nonprofit educational institution and charter school established in 2005. In order to employ the beneficiary in what it designates as an ESL teacher position,¹ 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 (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 September 19, 2013, the AAO sent a Notice of Derogatory Information (NDI) to the petitioner and its counsel. The NDI first addressed the matter of the petitioner's continued corporate existence under the laws of Ohio. Specifically, at the time of the NDI's issuance the website of the Ohio Secretary of State indicated that the petitioner's corporate status had been canceled over its failure to file a statement of continued existence. The NDI notified the petitioner that its corporate status is material to its eligibility for the requested visa classification, and that the derogatory information regarding its status raises serious questions regarding its continuous existence as an importing employer, whether it qualifies as a United States employer, and whether it is authorized to conduct business.

The second issue raised by the AAO in the NDI related to the petitioner's claimed cap exemption. Specifically, the AAO observed that the documentation submitted in support of the petitioner's claimed cap-exempt status is insufficient to establish that it meets the definition of an affiliated or related nonprofit entity under the applicable statutory and regulatory provisions. The AAO requested that the petitioner submit probative evidence to establish its claim that the beneficiary qualifies for exemption from the H-1B numerical cap based upon its affiliation with or relation to an institution of higher education.

The petitioner was afforded 30 days, plus three days for service by mail, to respond to the request. The petitioner did not respond within the 33 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

¹ The Labor Condition Application submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Secondary School Teachers, Except Special and Career/Technical Education" occupational classification, SOC (O*NET/OES) Code 25-2031, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

As the petitioner has not responded to the AAO's request for evidence, the petition is deniable under the regulatory provisions cited above. 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.

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.