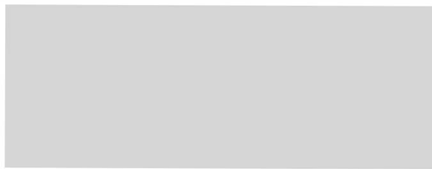
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)



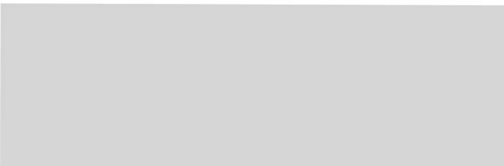
DATE: **MAY 1 9 2015**

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

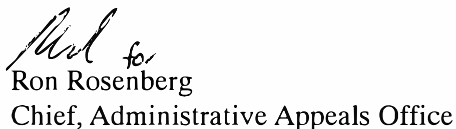
ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a "data collection, information processing and application software" company. On January 23, 2014 it filed a Form I-140, Immigrant Petition for Alien Worker, seeking to permanently employ the beneficiary in the United States as "Director of Sales, Europe" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree, in pertinent part, as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree .....

The regulation at 8 C.F.R. § 204.5(k)(4) provides, in pertinent part, as follows:

> (i) *General*. Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor . . . . The job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent . . . .

In accordance with the statute and the above regulation, the I-140 petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on March 8, 2013, and certified by the DOL (labor certification) on September 26, 2013.

On January 31, 2014, the Director denied the petition on the ground that the labor certification, instead of requiring a U.S. advanced degree or foreign equivalent degree, contains language indicating that the petitioner would accept an evaluation asserting the equivalency of the beneficiary's foreign education. The Director concluded that the proffered position does not qualify for classification as an advanced degree professional.

The petitioner filed a timely appeal, supplemented by a brief from counsel and additional documentation. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

To ascertain the petitioner's intent more precisely regarding the minimum educational requirement for the job offered, we issued a Request for Evidence (RFE) on January 13, 2015, to obtain the documentation prepared for potentially qualified U.S. workers and the DOL during the labor certification process. Specifically, we requested the petitioner to submit the following materials:

- the prevailing wage determination as certified by the DOL;
- all online and print recruitment for the position;
- all resumes received in response to the recruitment efforts;
- the signed recruitment report;
- the posted notice of the filing of the labor certification;
- any other communications with the DOL that reflected the petitioner's intent regarding the minimum educational requirements for the job, such as correspondence or documents generated in response to an audit.

The petitioner was given 45 days to respond to the RFE. On February 25, 2015 we received a letter and additional documentation from the petitioner. While the documentation covered four of the six categories listed in the RFE, it did not include the resumes received in response to the recruitment efforts or the signed recruitment report.

On March 24, 2015, therefore, we issued a Supplemental Request for Evidence. Once again the petitioner was requested to submit all the resumes it received in response to its recruitment efforts and the signed recruitment report. The petitioner was afforded 30 days to respond to the Supplemental RFE.

The petitioner did not respond to the Supplemental RFE within the 30-day period allowed, or at any time up to the date of this decision. If a petitioner does not respond to a request for evidence or a notice of intent to deny 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). 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).

Since the petitioner has not responded to the Supplemental RFE of March 24, 2015, the petition is deniable under the regulatory provisions cited above. Accordingly, the appeal will be summarily dismissed.

ORDER: The appeal is dismissed.