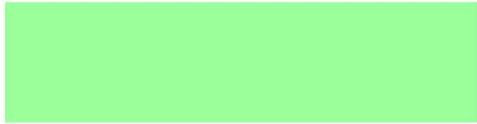


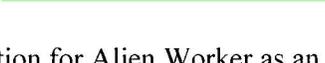


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 13 2013** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, and the AAO will remand the matter for further consideration and entry of a new decision.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a founder and chief executive officer of an information technology company. The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability. In addition, the director found that the petitioner had not submitted clear evidence that he will continue to work in his area of expertise in the United States.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on December 31, 2012. The director issued a Notice of Intent to Deny (NOID) the petition on March 28, 2013, instructing the petitioner to submit evidence that satisfies the regulatory requirements at 8 C.F.R. § 204.5(h)(3) and (5). On June 21, 2013, the director denied the petition stating: "As of the date on this decision no response has been received."

On appeal, the petitioner states: "In response to the USCIS letter dated March 28, 2013, the petitioner submitted . . . evidence by certified mail/return receipt request." The petitioner submits a "Domestic Return Receipt" from the United States Postal Service indicating that the petitioner's response was delivered to the Nebraska Service Center on May 2, 2013.

The director's June 21, 2013 decision did not consider the petitioner's response to the NOID. Accordingly, the decision of the director must be withdrawn, and the petition remanded to the director for the purposes of considering the response to the NOID and of issuing a new final decision addressing the response.

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).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.