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**U.S. Citizenship
and Immigration
Services**

B6

FILE:

WAC 02 208 50072

Office: CALIFORNIA SERVICE CENTER

Date: APR 10 2007

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. The AAO dismissed the appeal on September 23, 2004. On November 1, 2006, the petitioner filed a complaint for declaratory and injunctive relief in the U.S. Central District Court of California. On February 26, 2007, this office notified the petitioner that it had elected to *sua sponte* reopen this matter pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii). In this notice the AAO also provided the petitioner with notice of adverse information in the record and afforded the petitioner an opportunity to provide evidence that might overcome this information. This reopened appeal will be dismissed as abandoned.

The petitioner is a garment manufacturer. It seeks to employ the beneficiary permanently in the United States as a quality control inspector. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. Therefore, the director denied the petition. The AAO affirmed the director's decision and dismissed a subsequent appeal.

The procedural history of this case is documented in the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in this office's letter dated February 26, 2007, a central issue in this case is whether the petitioner remains in operation as a viable business.

The AAO reviews *de novo* issues raised in decisions challenged on appeal. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all evidence properly in the record including evidence properly submitted on appeal or in response to notification that the AAO has reopened a matter on its own motion.¹

On February 26, 2007, this office notified the petitioner that according to the records at the California Business Portal website maintained by the Office of the California Secretary of State, the petitioner is currently dissolved. See <http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C1763997&printer=yes> (accessed March 30, 2007).

This office also notified the petitioner that if it is currently dissolved, this is material to whether the job offer, as outlined on the immigrant petition filed by this organization, is a *bona fide* job offer. Moreover, any such concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record. See *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.) It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See *Id.*

This office allowed the petitioner 30 days in which to provide evidence that the records maintained by the Office of the California Secretary of State were not accurate and that the petitioner remains in operation as a viable business or was in operation during the pendency of the petition and appeal. More than 30 days have passed since

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). Submissions are also allowed after a matter has been reopened by the Service pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii). The record in the instant case provides no reason to preclude consideration of any documents newly submitted on appeal or in response to notification that the AAO reopened the matter on its own motion. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

February 26, 2007 and the petitioner has failed to respond to this office's request for a certificate of good standing or other proof that the petitioner remains in operation as a viable business or was in operation from the July 19, 1999 priority date onwards. Thus, this reopened appeal will be dismissed as abandoned.²

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

² On March 9, 2007, the petitioner requested that its complaint in U.S. district court in California be dismissed.