

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

**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**

B6



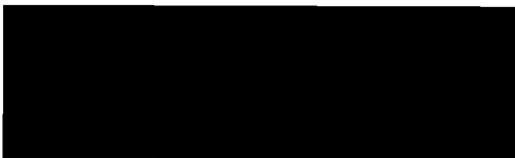
DATE: **SEP 30 2011** Office: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



**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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the U.S. Department of Labor (DOL).

The record of proceeding reflects the following procedural history:

- On September 28, 2007, the instant Form I-140 was filed by the petitioner (EIN [REDACTED]) on behalf of the beneficiary. In support of the petition, the petitioner submitted, in part, a 2006 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, for a business named [REDACTED] (EIN [REDACTED]) an IRS Form W-2, Wage and Tax Statement, issued to the beneficiary by [REDACTED] and a 2004 IRS Form W-2 issued to the beneficiary by [REDACTED] (EIN [REDACTED]).
- On December 8, 2008, the director issued a Request for Evidence (RFE), requesting the petitioner to submit, in part, documentary evidence to establish the relationship between [REDACTED] dba [REDACTED]; [REDACTED] and, [REDACTED]. The director also requested additional evidence to establish the petitioner's ability to pay the proffered wage.
- In response to the RFE, the petitioner provided, in part, a "Bill of Sale" dated December 16, 2006 indicating that the [REDACTED] sold the business and property at [REDACTED] Street, Corona, California to [REDACTED]. The petitioner also stated that the original owner of the business refused to provide the business tax return for year 2001. The petitioner did not provide any evidence to establish the relationship between the different entities in response to the RFE.
- On January 29, 2009, the director denied the petition. The director determined that the petitioner had failed to establish that it had the continuing ability to pay the beneficiary as of the priority date of the petition; that the petitioner had not established that it was any longer in business; and, that the petitioner had not submitted evidence establishing a successor-in-interest relationship between it and various entities that had submitted documentation in support of the petition.
- On February 19, 2006, the petitioner filed a motion to reopen and reconsider the director's decision. On March 18, 2009, the director reaffirmed his decision to deny the petition. In his decision, the director noted that evidence of the petitioner's continuing ability to pay the beneficiary the proffered wage included documentation from four different entities ([REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] dba [REDACTED]; and, [REDACTED]).

[REDACTED], and that the petitioner had failed to establish the legal relationships among the entities.

- On April 3, 2009, the petitioner appealed the director's decision. Counsel did not submit a brief with the appeal. Part 3 of Form I-290B, Notice of Appeal of Motion, where the petitioner is to state the basis of the appeal, only states "See Attached documents." As of this date, the AAO has received nothing further.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel here has not specifically addressed the reasons stated for denial of the petition. She has not even expressed disagreement with the director's decision. The appeal must therefore be summarily dismissed.

Even if the AAO did not summarily dismiss the appeal, it would be dismissed as moot because, according to the California Secretary of State, the petitioner was dissolved on May 20, 2003. *See* [REDACTED] (last accessed September 28, 2011). If the petitioning business is no longer an active business, the petition and any appeal have become moot. The "Bill of Sale" in the record dated December 16, 2005, indicates that the petitioner sold all of the equipment related to the restaurant. The "Bill of Sale" does not establish that there exists a successor-in-interest to the petitioner that intends to permanently employ the beneficiary in the offered position. The AAO also concurs with the director's determination that the petitioner failed to establish its continuing ability to pay the beneficiary the proffered wage from the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status.

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 summarily dismissed.