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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



B6

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **APR 13 2010**
EAC 06 123 51888

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On February 3, 2010, this office 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.

The petitioner is an information technology firm. It seeks to employ the beneficiary permanently in the United States as a computer software engineer, applications ("Vice-President, Microsoft Great Plains Practice), pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3). As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that the beneficiary had a U.S. bachelor's degree or foreign degree equivalent as of the priority date of the visa petition, and denied the petition accordingly.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On June 19, 2009, this office issued a request for evidence to the petitioner, instructing the petitioner to submit evidence that the beneficiary possesses the equivalent of a U.S. bachelor's degree based on one course of study, evidence of its recruitment efforts for the certified position, evidence of its continuing ability to pay the proffered wage, and evidence establishing that the beneficiary has the required two years of experience in the position offered, or the alternate permitted occupation. No response was received to this request for evidence.

On February 2, 2010, the AAO notified the petitioner that according to the records at the website maintained by the state of Virginia, the state has cancelled the petitioner's certificate of organization/certificate of registration as of December 31, 2009.¹ The AAO also informed the petitioner that no response had been received to the prior request for evidence and included a copy of the request for evidence in the notification issued February 2, 2010.

This office also notified the petitioner that if the petitioning business was no longer a legally authorized business, then the petition and its appeal to this office have become moot. This status is material to whether the job offer, as outlined on the immigrant petition filed by this organization, is a *bona fide* job offer. 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 Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)

¹ See https://cisiweb.scc.virginia.gov/z_container.aspx . (Last accessed 4/12/10).

This office allowed the petitioner 30 days in which to provide evidence that the records maintained by the state of Virginia were not accurate and that the petitioner is in active status. More than 30 days have passed 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 priority date onwards. Thus, the 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 as moot.

² Additionally, as noted in the notice of derogatory information, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case. Additionally, the petitioner was advised that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, if a petitioner fails to respond to a request for evidence or to 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. The petitioner's lack of response to the AAO's request for evidence constitutes an additional grounds for dismissal of the appeal.