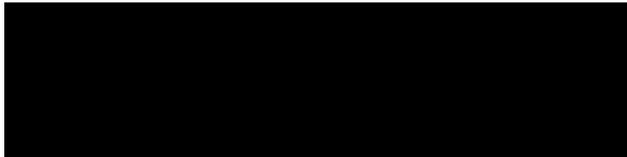


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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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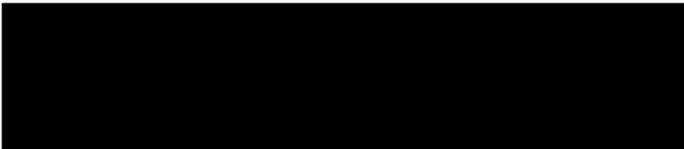
B6

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: AUG 18 2010  
LIN 07 156 50949

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, Nebraska Service Center. Subsequently, the petitioner filed two motions to reopen, which the director determined failed to overcome the grounds for denial and affirmed the petition's denial. It then came before the Administrative Appeals Office (AAO) on appeal. On June 29, 2010, this office provided the petitioner with a 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 auto sales and repairs firm. It seeks to employ the beneficiary permanently in the United States as an auto mechanic 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 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 on November 16, 2007. The petitioner filed a motion to reopen on December 17, 2007, which the director concluded failed to overcome the grounds for denial. The petitioner filed a second motion to reopen on February 29, 2008, which the director also reviewed and determined that it failed to overcome the grounds for denial and reaffirmed the petition's denial.

The petitioner filed an appeal on April 23, 2008, contending that the petitioner had established its ability to pay the proffered wage.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).<sup>1</sup>

On June 29, 2010, this office notified the petitioner that according to the records at the website maintained by the District of Columbia, the petitioner's business status is currently revoked. *See* attached copy of the online District of Columbia Organization Information (accessed June 1, 2010).

This office also notified the petitioner that if it is currently revoked, this is material to whether the job offer, as outlined on the immigrant petition filed by this organization, remains a *bona fide* job offer. Further, the petitioner was notified that the record indicates that the beneficiary formed the petitioning company, thus raising another issue of the *bona fides* of the 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.*

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<sup>1</sup>The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

This office allowed the petitioner 30 days in which to provide evidence that the records maintained by the District of Columbia 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. This office also requested additional information pertinent to the beneficiary's relationship to the petitioning company, the beneficiary's claimed work experience, and the petitioner's ability to pay the proffered wage. More than 30 days have passed and the petitioner has failed to respond to this office's notice with the requested information and with 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.<sup>2</sup>

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.

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<sup>2</sup> 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.

For more information, contact the Corporations Division at (202) 442-4400 or Ask the Director .

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