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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

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 08 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a merchandise retailer. It seeks to permanently employ the beneficiary in the United States as an accountant. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).[1] The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is August 13, 2002, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director denied the petition on April 4, 2008. The decision states that the petitioner failed to establish that the beneficiary meets the minimum requirements of the offered position and for classification as a member of the professions pursuant to section 203(b)(3)(A) of the Act.

The petitioner appealed the decision to the AAO on May 6, 2008. The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

On September 24, 2010, the AAO issued a Request for Evidence and Notice of Derogatory Information (RFE/NDI). The RFE/NDI instructed the petitioner to submit additional evidence pertaining to the minimum requirements for the offered position as set forth on the labor certification and, beyond the decision of the director, evidence pertaining to the beneficiary's experience in the job offered. The RFE/NOID also informed the petitioner that, according to the website of the State of Texas Comptroller of Public Accounts, the company was no longer operating. Where there is no active

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[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. The RFE/NOID instructed the petitioner to submit evidence establishing that it was still in business.

The RFE/NOID afforded the petitioner 45 days to submit a response. *See* 8 C.F.R. § 103.2(b)(8)(iv). The RFE/NOID stated that if the petitioner did not respond, the AAO would dismiss the appeal without further discussion.

To date the AAO has not received a response to the RFE/NOID from the petitioner or counsel of record. On November 9, 2010, the AAO received a letter from an individual who identifies himself as a chaplain. is not a party to this case nor does he represent the petitioner. *See* 8 C.F.R. § 103.2(a)(3). The letter states that "the employer is unable to file relevant Income tax returns because [the] company [had] no business activity for the year[s] mentioned in the [RFE/NOID]. According to law and regulation this case will be closed on la[ck] of evidence[]." The letter then describes the beneficiary and his family as loyal, hard working, and community-minded. Included with the letter are three letters from the principals of the beneficiary's children's schools. The letters describe each child's conduct and achievements. These letters do not constitute a response to the RFE/NOID and do not address the issues outlined therein.

The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Thus, the petitioner failed to establish that the beneficiary meets the minimum requirements of the offered position and for classification as a member of the professions pursuant to section 203(b)(3)(A) of the Act; the beneficiary possesses the qualifications required to perform the proffered position; and the petitioner is still actively doing business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.