

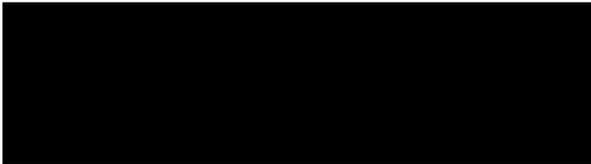
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529-2090



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



B6

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

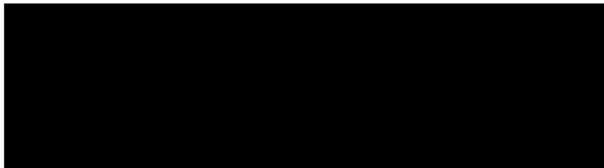
Petitioner:  
Beneficiary:



**DEC 08 2010**

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:

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 software development and consulting business. It seeks to permanently employ the beneficiary in the United States as a senior programmer analyst. The petitioner requests classification of the beneficiary as a professional pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).<sup>1</sup> 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 director denied the petition on January 30, 2008. The decision states that the job offer portion of the labor certification does not require a professional.

The petitioner timely appealed the decision to the AAO on February 27, 2008.<sup>2</sup> 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.<sup>3</sup>

On October 8, 2010, the AAO issued a Notice of Derogatory Information (NDI) to the petitioner and its counsel of record. The NDI explained that, during the adjudication of the appeal, evidence came to light that the petitioner's corporate status had been revoked by the State of Illinois.<sup>4</sup> The NDI instructed the petitioner to provide documentary evidence establishing that it is has been operation and in active status within 30 days.<sup>5</sup>

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<sup>1</sup> 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.

<sup>2</sup> The Form I-290B, Notice of Appeal or Motion, states that counsel would submit a brief and/or additional evidence within 30 days. To date, counsel has not submitted a brief or additional evidence to supplement the Form I-290B. Accordingly, the instant appeal could have been summarily dismissed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

<sup>3</sup> 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).

<sup>4</sup> *See* <http://www.ilsos.gov/corporatellc/CorporateLlcController> (last accessed December 2, 2010).

<sup>5</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. *See Soltane v. DOJ*,

To date, the AAO has not received a response to the NDI. The petitioner has failed to provide evidence establishing that it remains in operation and in active status. 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 appeal will be dismissed as abandoned. The record does not establish that a *bona fide* job offer continues to exist.

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.