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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]  
SRC 06 200 51650

Office: TEXAS SERVICE CENTER Date:

FEB 02 2010

IN RE:

Petitioner:  
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:

SELF REPRESENTED

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

The petitioner claims to manufacture and sell bread. It seeks to permanently employ the beneficiary in the United States as a "slim English bread manufacturing supervisor." The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).<sup>1</sup> The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the labor certification was accepted for processing by the DOL, is December 8, 2005. *See* 8 C.F.R. § 204.5(d).

The director denied the petition on February 14, 2007. The decision states that the petitioner failed to establish that the beneficiary possessed the educational requirements of the job offered as set forth in the labor certification. On March 14, 2007, the petitioner appealed the decision to the Administrative Appeals Office (AAO).

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<sup>1</sup>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. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) requires the petitioner to submit evidence establishing that the beneficiary meets all of the requirements of the offered position as set forth in the labor certification.

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. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

A petition for a professional must also establish that the beneficiary meets any training or experience requirements set forth in the labor certification. 8 C.F.R. § 204.5(l)(3)(ii)(A).

The AAO issued a request for evidence (RFE) on October 5, 2009.<sup>2</sup> The RFE states that the evidence in the record was not sufficient to establish that the beneficiary possessed a U.S. baccalaureate degree. Accordingly, the RFE instructed the petitioner to submit evidence establishing that the actual minimum requirements of the offered position includes alternatives to a bachelor's degree, such as the credentials held by the beneficiary.

The RFE also noted that the beneficiary of the petition appeared to be the daughter of the petitioner's owner. The RFE instructed the petitioner to explain the relationship between the beneficiary and any owner, officer or incorporator of the company, and provide any evidence that the relationship was provided to the DOL in accordance with 20 C.F.R. § 656.17.

Finally, the RFE stated that, according to the Florida Department of State, the petitioner was voluntarily dissolved on October 14, 2008. The RFE instructed the petitioner to confirm that it still exists, and explain how it has the continuing ability to pay the proffered wage if it is no longer doing business. The RFE specifically alerted the petitioner that it was afforded 12 weeks to respond. *See* 8 C.F.R. § 103.2(b)(8). The AAO has not received a response to the RFE. 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). Because the petitioner failed to respond to the RFE, the AAO is dismissing the appeal.

Furthermore, it is noted that, if the petitioner is currently dissolved, this is material to whether the job offer, as outlined on the immigrant petition filed by this organization, is a *bona fide* 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.* As the petitioner failed to respond to the RFE with evidence pertaining to the viability of the business, the appeal will also be dismissed as abandoned.<sup>3</sup>

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<sup>2</sup>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).

<sup>3</sup>Additionally, 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.

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.