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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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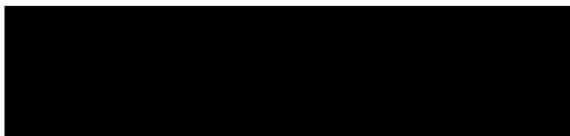


Date: JUL 20 2011 Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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 preference visa petition was denied by the Director, Nebraska Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On February 18, 2011, 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 a provider of fire, water, and disaster restoration services. It seeks to employ the beneficiary permanently in the United States as a crew chief 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, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). 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. The director also determined that the petitioner failed to establish that the petition requires less than two years of training or experience such that the beneficiary may be found qualified for classification as an other worker. Therefore, the director denied the petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On February 18, 2011, this office notified the petitioner that according to the records at the official website maintained by the Illinois Secretary of State, the petitioner was involuntarily dissolved on September 1, 2006. *See* <http://www.ilsos.gov/corporatellc/CorporateLlcController> (accessed February 15, 2011).

This office also notified the petitioner that if it 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.*

The AAO also noted that on appeal, counsel claimed that a different business entity, [REDACTED] is a successor-in-interest to the petitioner. However, the purported transaction giving rise to the claimed successorship occurred in 2005 (according to the Bill of Sale in the record) or 2006 (according to counsel's letter dated November 18, 2008). Regardless, the petitioner's dissolution and claimed transfer of assets both occurred at least one year prior to the petitioner's filing of the instant petition on September 13, 2007. It cannot be credibly claimed that [REDACTED] has acquired any right to carry on the instant petition as a successor when it allegedly acquired its interest in the petitioner's business long before the filing of the petition. As the petitioner has elected to seek classification of the beneficiary as an immigrant worker after its dissolution and after its alleged sale of assets in 2005 or 2006, it must establish its eligibility for the beneficiary sought without relying on the support of [REDACTED]

which apparently chose not to file the petition in 2007 as a successor-in-interest even though it claims now to have been the successor at that time.

This office allowed the petitioner 30 days in which to provide evidence that the records maintained by the Illinois Secretary of State 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. Although counsel submits a response reiterating the claim that the [REDACTED], (which counsel now claims has in turn been succeeded to by [REDACTED]) was a valid successor-in-interest to the petitioner, the record is absent any evidence to establish that the petitioner was not involuntarily dissolved on September 1, 2006, more than one year prior to the petitioner's filing of the instant petition on September 13, 2007. Thus, the appeal will be dismissed as moot as the petitioner had been dissolved and the job offer, as outlined on the immigrant petition filed by this organization, cannot be considered *bona fide*.¹

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 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) (AAO's *de novo* authority is well recognized by the federal courts).

Although not noted by the director in the Notice of Denial, the appeal would also be dismissed even if the petitioner was not dissolved because the certified job of crew chief requires at least two years of experience as listed on the Form ETA 750, but the petitioner indicated that it was filing the Form I-140, Petition for Alien Worker, for an "other worker."

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Here, the Form ETA 750 was accepted on October 26, 2001. The Form ETA 750 states that the position requires two years of experience in the offered job. The Form I-140 was subsequently filed on September 13, 2007. On Part 2.g. of the Form I-140, the petitioner indicated that it was filing the petition for an "other worker (requiring less than two years of training or experience)."

¹ 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.

The regulation at 8 C.F.R. § 204.5(i) provides in pertinent part:

(4) Differentiating between skilled and other workers. The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

In this case, the labor certification indicates that the proffered position of crew chief requires two years of experience in the offered job. However, the petitioner requested the other worker classification on the Form I-140. There is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) to readjudicate a petition under a different visa classification in response to a petitioner's request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

The evidence submitted does not establish that the job requires less than two years of training or experience such that the beneficiary may be found qualified for classification as an "other worker." Accordingly, the petition cannot be approved for this additional reason.

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. The appeal will be dismissed.