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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 and Immigration Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: MAR 30 2011

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Beneficiary 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 (director), 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 computer consulting business. It seeks to permanently employ the beneficiary in the United States as a business intelligence consultant. 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 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 is July 12, 2006, 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 March 31, 2008. The director's decision concludes that the petitioner failed to establish that the beneficiary meets the requirements of the offered position, as those requirements are set forth on the labor certification. The petitioner appealed the decision to the AAO on April 22, 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

During the adjudication of the appeal, the AAO has learned that, according to the Virginia State Corporation Commission, the petitioner's corporate status in Virginia had been withdrawn. If the petitioner is no longer an active business, the petition and its appeal are moot.³ In which case, the

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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), also grants 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).

³ Where there is no active 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. Additionally, even if

appeal shall be dismissed as moot.

Accordingly, on January 11, 2011, the AAO issued a Notice of Derogatory Information and Request for Evidence (hereinafter "RFE"), instructing the petitioner to submit evidence establishing that it has not been dissolved and is currently actively doing business. The RFE also requests that the petitioner provide its federal tax returns for 2006, 2007, 2008 and 2009; its most recent Form 941, Employer's Quarterly Federal Tax Return; and any Forms W-2 issued to the beneficiary for 2006, 2007, 2008, 2009 and 2010.

Further, the RFE noted that the petitioner had filed Forms I-140, Immigrant Petition for Alien Worker, on behalf of multiple beneficiaries. When a petitioner has filed petitions on behalf of multiple beneficiaries which have been pending simultaneously, the petitioner must establish that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wage to each beneficiary as of the priority date of each petition and continuing until each beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144 (Acting Reg. Comm. 1977).

The record in the instant case contained no information about the priority dates and proffered wages for the beneficiaries of the other petitions, whether the beneficiaries have withdrawn from the petition process, or whether the petitioner has withdrawn its job offers to the beneficiaries. There is also no information in the record about whether the petitioner has employed the beneficiaries or the wages paid to the beneficiaries, if any. Thus, the RFE informed the petitioner that it had not established its ability to pay the proffered wage for the beneficiary or the proffered wages to the beneficiaries of the other petitions.

Accordingly, the RFE instructed the petitioner to provide the information for each Form I-140 petition beneficiary from 2006 to the present, including name, dates of employment, proffered wage and evidence of wages paid, if any.

The RFE afforded the petitioner 45 days to submit a response. *See* 8 C.F.R. § 103.2(b)(8)(iv). The RFE 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. 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). The AAO is unable to substantively adjudicate the appeal without a meaningful response to the line of inquiry set forth in the RFE.

Thus, the petitioner failed to establish that (1) it is an active business, (2) the beneficiary possesses

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 minimum requirements to perform the offered position, and (3) it has possessed the ability to pay the proffered wage from the priority date. 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.