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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

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U.S. Citizenship
and Immigration
Services

[REDACTED]

B6

DATE: OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

NOV 02 2011
IN RE: Petitioner: [REDACTED]
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:
[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 is a restaurant. It seeks to permanently employ the beneficiary in the United States as a cook. The petitioner requests classification of the beneficiary as a skilled worker 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 February 8, 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 February 4, 2008. The director's decision concluded that the petitioner failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

The labor certification and petition in the instant case was filed by [REDACTED] a single member limited liability company (LLC) owned by [REDACTED]. The petition states that [REDACTED] does business as [REDACTED]. The record contains the 2005 and 2006 Forms 1040, U.S. Individual Tax Return, of [REDACTED] with Schedules C relating to the company.³

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.

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 A single member LLC is taxed as a sole proprietorship unless it elects to be taxed as a corporation. *See* <http://www.irs.gov/businesses/small> [REDACTED]. Sole proprietors report income from their businesses on Form 1040 each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. However,

Counsel's brief in support of the appeal states that an individual named [REDACTED] has purchased [REDACTED]. The record does not contain any evidence documenting the claimed transaction.

If [REDACTED] is no longer the petitioner, then the acquiring entity must establish that it is a successor-in-interest. *See Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481, 482 (Comm. 1981). In order to establish that a successor relationship, the evidence in the record must fully describe and document any claimed merger, acquisition or other assumption of ownership. Evidence of transfer of ownership must show that the successor not only purchased the predecessor's assets but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business.

The evidence in the record must also establish that the predecessor entity possessed the ability to pay the proffered wage from the priority date until the date of the transaction, and the successor entity has possessed the ability to pay the proffered wage from the date of the transaction until the beneficiary obtains lawful permanent residence. *Id.*

In addition, according to U.S. Citizenship and Immigration Services (USCIS) records, [REDACTED] filed immigrant petitions on behalf of two additional beneficiaries. Where a petitioner has filed multiple petitions for 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 (Acting Reg. Comm. 1977).

Further, [REDACTED] has been administratively dissolved by the State of Wisconsin. *See* the Wisconsin Department of Financial Institutions website at www.wdfi.org/apps/CorpSearch (last accessed September 14, 2011). 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.

Accordingly, on September 29, 2010, the AAO issued a Request for Evidence (RFE). The RFE instructed the petitioner to submit evidence relating to the original petitioner's corporate status, the claimed purchase of the petitioner by [REDACTED] and the predecessor's and successor's ability to pay the proffered wage.

The RFE was sent to the address of record for the petitioner and counsel of record and provided 45 days to submit a response. *See* 8 C.F.R. § 103.2(b)(8). The RFE states that, if the petitioner failed to respond to the RFE, the AAO would dismiss the appeal without further discussion. *See* 8 C.F.R. § 103.2(b)(14).

unlike sole proprietors, a single member LLC exists as a legal entity apart from the individual owner.

To date, the AAO has not received a response to the RFE. Thus, the appeal will be dismissed as abandoned.⁴

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.

⁴ 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.