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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**



B6

Date: **OCT 19 2011** Office: TEXAS SERVICE CENTER

FILE: 


IN RE: Petitioner: 
Beneficiary: 

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), 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 describes itself as a dental laboratory. It seeks to employ the beneficiary permanently in the United States as a dental technician pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) and (ii). A labor certification, certified by the U.S. Department of Labor (DOL), accompanied the petition. The director determined that the petitioner failed to demonstrate its ability to pay the proffered wage and denied the petition accordingly.

On August 1, 2011, the AAO issued a Notice of Derogatory Information (NDI).¹ The NDI explained that, according to the New York State Department of State business website at [www. \[REDACTED\]](http://www. [REDACTED]) the petitioner had been dissolved on January 28, 2009. The NDI instructed the petitioner to submit:

- Evidence of its active status with the State of New York;
- Updated evidence of the petitioner's ability to pay the proffered wage; and
- Additional evidence pertaining to the beneficiary's qualifying experience.

The NDI specifically alerted the petitioner that failure to respond would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. 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).

As stated in the NDI, any 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 NDI allowed the petitioner 30 days in which to provide evidence that the records maintained by the New York State Department of State were not accurate and that the petitioner remains in operation as a viable business.

¹ 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).

Counsel's response to the NDI was received on September 8, 2011. Counsel explained that the state of New York had legally dissolved the petitioning company because the business had failed to pay taxes and that "this mistake was immediately corrected by the petitioner through its CPA office." However, the NDI response does not contain any evidence that the petitioner is in good standing with the State of New York. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, the New York State Department of State's website still states that the petitioner is dissolved.²

Counsel's NDI response also does not include the requested evidence establishing that the beneficiary qualifies for the offered position. 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).³

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.

² See <http://www.> (last accessed September 29, 2011).

³ The AAO also concurs with the director's conclusion regarding the petitioner's ability to pay the proffered wage. Through an examination of the net income and net current assets on the petitioner's tax returns, and considering the totality of the circumstances, the petitioner failed to establish its ability to pay the proffered wage in 2003, 2004, 2005, 2006, 2008 and 2009. In addition, it is noted that the copy of the 2006 Form 1120S, U.S. Income Tax Return for an S Corporation, submitted by the petitioner in response to the director's February 12, 2008, Request for Evidence (RFE) reflects an ordinary business income of \$46,300 on Line 21. Meanwhile, the copy of the 2006 Form 1120S submitted in response to the AAO's August 1, 2011, NDI reflects an ordinary business income of just \$8,063. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The petitioner has failed to offer any explanation for this significant discrepancy.