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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Date: SEP 09 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

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:

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, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was a garment manufacturer. It sought to employ the beneficiary permanently in the United States as a sewing machine operator. 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 record did not contain sufficient credible evidence establishing that the beneficiary possessed the required education and training in the proffered position of sewing machine operator as listed on the labor certification. The director further determined that even if the record contained a Form ETA 750 approved by the DOL which amended the requirements of the proffered position to no education, no training, and six months of experience as a sewing machine operator, the petition could not be approved as the position's requirements did not meet the definition of either a professional or skilled worker. The director denied the petition accordingly.

The AAO issued a Notice of Derogatory Information (NDI) to counsel and the petitioner on July 21, 2011, informing the parties that a review of the website at http://kepler.sos.ca.gov/cbs.apx revealed that the petitioner, L.A. Beachwear, Inc., was dissolved.

The AAO informed the parties that if the petitioner was no longer an active business, the petition and its appeal to this office have become moot.[1] In which case, the appeal shall be dismissed as moot. Therefore, the AAO requested that the petitioner provide evidence such as invoices, recent bank statement, recent federal or California quarterly wage reports, etc., demonstrating that the petitioning business is not inactive and had current business activity for 2010 and 2011. Furthermore, the AAO requested that the petitioner submit copies of any licenses or permits issued to the petitioner to operate by the state of California or municipal subdivision thereof, as applicable.

In the NDI, the AAO specifically alerted the parties that failure to respond to the NDI 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).

Because counsel and the petitioner failed to respond to the NDI, the AAO is dismissing the appeal as moot.

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[1] 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 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.