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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

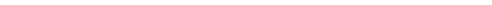


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Date: **SEP 29 2011**

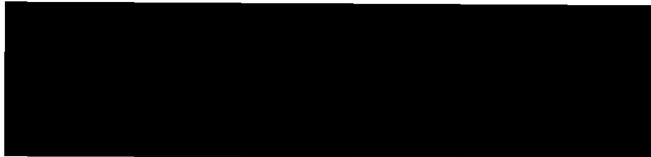
Office: TEXAS SERVICE CENTER

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.

Thank you

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On August 10, 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 describes itself as a “software consultancy & development” company. It seeks to employ the beneficiary permanently in the United States as a “Sr. Oracle DBA/Data Modeler” 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, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the beneficiary did not meet the education requirements set forth on the labor certification and the petitioner did not establish that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. 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 August 10, 2011, this office notified the petitioner that during the adjudication of the appeal, evidence came to light that the petitioning entity in this matter may no longer be in business. The petitioner was informed that the AAO received a letter (dated June 24, 2011) from counsel for the petitioner stating that counsel had been unable to make contact with the petitioner for more than one year. Counsel further stated that “[t]he petitioner company was sold and it may have been closed down.¹ Without further information and instructions we are unable to continue representation.” According to counsel, the following attempts were made to contact the petitioner: telephone calls and emails to the previous owner [REDACTED] unanswered emails to a possible owner [REDACTED] and correspondence to the petitioner’s last known address (most recent correspondence was returned and marked “return to sender”). The petitioner was instructed that if the petitioning business is no longer an active business, the petition and its appeal to this office have become moot.² In which case, the appeal shall be dismissed as moot.

This office also notified the petitioner that where there is no active business, no bona fide job offer exists. 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.

¹ The last filing with the State of Massachusetts was a certification of resignation by [REDACTED]. Nothing shows that the petitioner filed an annual report for 2010 or 2011. *See* (http://www.secstates.com/MA_Massachusetts_Secretary_of_State_Corporation_Search/) (accessed August 9, 2011).

² Where there is no active business, no *bona fide* 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.

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.*

This office allowed the petitioner 30 days in which to provide evidence that the petitioner was still a going concern capable of providing bona fide full-time employment pursuant to the terms of the labor certification. The petitioner was also instructed to provide: copies of its federal tax returns for years 2006 through 2010; copies of its Forms 941 Employer's Quarterly Tax Returns for years 2007 through 2010; and copies of W-2 Forms issued to the beneficiary for years 2008 through 2010. The petitioner was informed that the notice was being sent to the petitioner's address of record and that failure to respond would result in abandonment. More than 30 days have passed and the petitioner has failed to respond to this office's request for evidence and the NDI. Thus, the appeal will be dismissed as abandoned and moot.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.

³ 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.