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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**



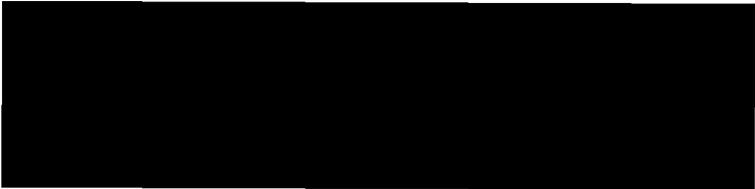
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Date: **APR 19 2012** Office: NEBRASKA SERVICE CENTER FILE:

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, Nebraska Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On January 19, 2012, the AAO issued a Notice of Derogatory Information (NDI) to the petitioner and afforded the petitioner an opportunity to provide evidence that might overcome this information.

The petitioner is a mortgage broker. It seeks to employ the beneficiary permanently in the United States as an administrative assistant 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 noted that the ETA Form 9089 required 12 months experience in the proffered position yet the petitioner filed a Form I-140 for a skilled worker (requiring at least two years of specialized training or experience). The director, therefore, denied the petition stating that the petitioner failed to establish that the proffered position required at least two years of training or experience as required by 8 C.F.R. § 204.5(1)(4). The director further denied the petition because the petitioner did not establish that the beneficiary had one year of experience in the proffered profession as required by the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On January 19, 2012, this office notified the petitioner that according to the records at the official website of the Florida Secretary of State (<http://ccfcorp.dos.state.fl.us/search.html>) (accessed January 18, 2012), the petitioner's corporate status in Florida was voluntarily dissolved on October 19, 2009. This office also notified the petitioner that if it were no longer an active business, the petition and its appeal to this office have become moot.<sup>1</sup>

This office allowed the petitioner 30 days in which to provide evidence that it is an active business in good standing with the State of Florida. More than 30 days have passed and the petitioner has failed to respond to this office's NDI and request for proof that the petitioner remains an active business in good standing in Florida. Thus, the appeal will be dismissed as abandoned.<sup>2</sup>

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.

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<sup>1</sup> 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.

<sup>2</sup> 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.



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**ORDER:** The appeal is dismissed as moot.