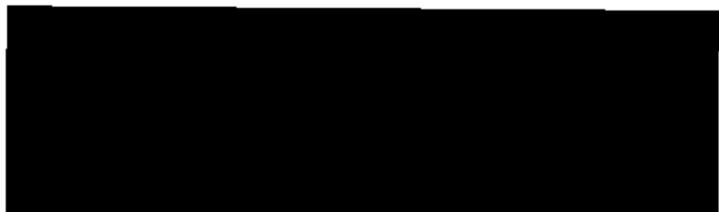


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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: **AUG 10 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a carpenter. 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 petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and that the petitioner had not established that it was the legitimate successor-in-interest to the entity that filed the labor certification. The director denied the petition accordingly.

The AAO issued a NOID on October 18, 2011 based on evidence that the petitioner was out of business and had been dissolved as of September 12, 2011.<sup>1</sup> The AAO additionally noted that the original entity that filed the labor certification was still active and the petitioner must resolve this inconsistency as it relates to the petitioner's claim of successorship. It is incumbent on 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). In response, the petitioner claimed that a third entity was now the successor to the petitioner. The petitioner did not send any evidence to establish successorship of the third entity.

The AAO issued a second Notice of Intent to Dismiss (NOID) on April 23, 2012 seeking information necessary for adjudication of the petitioner's claim on the issue of the petitioner's ability to pay the proffered wage<sup>2</sup> and information to establish the entire chain of successorship from M. Paladino, Inc. who filed the initial Application For Alien Employment Certification (Form ETA 750) to the petitioner to the third entity claimed in response to the AAO's NOID.

The petitioner was informed that it had 30 days to respond to the NOID and that if it did not respond the appeal would be dismissed without further discussion. The petitioner was further informed that a failure to respond would preclude a material line of inquiry and would be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). To date, more than 30 days after the NOID was issued, no response to the NOID has been received. Without the petitioner's response, the issue of

---

<sup>1</sup> 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.

<sup>2</sup> The AAO's NOID also noted that the evidence submitted did not establish that the petitioner had the ability to pay the proffered wage from 2001 through 2005 and even if the petitioner could establish successorship, the petition would be denied as the petitioner failed to establish its continuing ability to pay the beneficiary the proffered wage from the priority date onward.

successorship and the petitioner's continuing ability to pay the beneficiary the proffered wage from the priority date onward has not been established. The appeal shall be dismissed.

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 and has failed to respond to a request for evidence which precludes a material line of inquiry concerning the merits of the petition.

**ORDER:** The appeal is dismissed.