

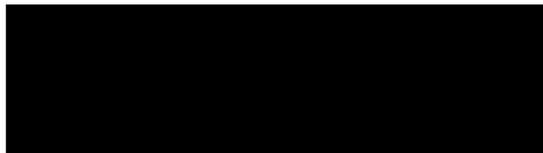
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



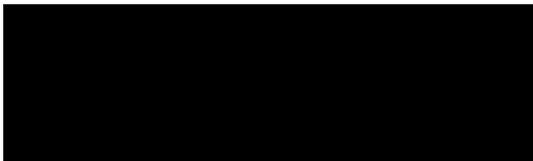
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DATE: **AUG 22 2012** OFFICE: VERMONT SERVICE CENTER FILE: 

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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a clothing store. It seeks to employ the beneficiary permanently in the United States as a buyer - import / export 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 record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's February 20, 2007 denial, the director determined that the petitioner had not established that the beneficiary met the minimum requirements on the labor certification at the time the ETA 750 was filed. 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 April 5, 2012, this office issued a Notice of Derogatory Information and Request for Evidence (NODI/RFE) notifying the petitioner that according to the official website maintained by the New York Department of State, Division of Corporations, the petitioner was dissolved on September 24, 1997. *See* www.dos.ny.gov (accessed April 24, 2012). This office also notified the petitioner that if it is currently dissolved, this is material to whether the job offer, as outlined on the immigrant petition filed by this organization, is a *bona fide* job offer. 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. 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 records maintained by the New York Department of State, Division of Corporations were not accurate and that the petitioner remains in operation as a viable business or was in operation during the pendency of the petition and appeal. The petitioner's counsel, in a response dated May 2, 2012, did not refute the accuracy of the records indicating that the petitioner was dissolved. Counsel states that the petitioner has a successor-in-interest, [REDACTED] and that there has been a "gap in succession." Counsel stated that the petitioner was seeking evidence that it, or its claimed successor, continued to operate at all relevant times. Counsel provides no other information or documentation

with regards to this successor-in-interest.¹ The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, more than 30 days have passed and the petitioner has failed to respond to this office's request for a certificate of good standing or other proof that the petitioner, or any successor-in-interest, remains in operation as a viable business or was in operation from the priority date onwards. Thus, the appeal will be dismissed.² The petitioner has not provided a response to the NODI/RFE to establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. The petitioner also failed to provide a copy of the documentation prepared in accordance with the prior DOL labor certification regulations at 20 CFR § 656 (2004) as requested in the NODI/RFE.

In the NODI/RFE, the AAO specifically alerted the petitioner that failure to respond to the NODI/RFE 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).

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 as moot.

¹ The petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the beneficiary's predecessor employer. The petitioning successor must also demonstrate that the job opportunity is the same as originally offered on the labor certification. The petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

² 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.