

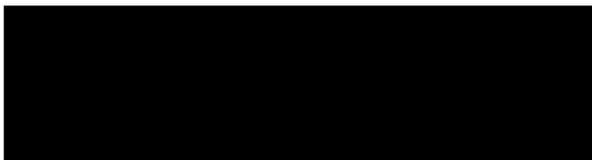
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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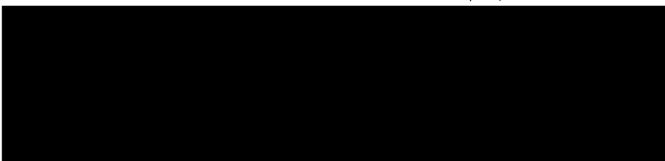
DATE: **FEB 02 2012** OFFICE: TEXAS SERVICE CENTER

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,  
*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty foreign food cook 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 petitioner had not established that it had the ability to pay the proffered wage and denied the petition accordingly.

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.

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

On December 22, 2011, the AAO issued a Notice of Derogatory Information (NDI). The NDI notified the petitioner that the status of the petitioning business had been forfeited as determined by the Maryland Secretary of State's official website. The NDI stated that the dissolution of the petitioner is material to whether the permanent employment offered to the beneficiary is a *bona fide* job offer.

In addition, the NDI also instructed the petitioner to submit additional evidence of its ability to pay the proffered wage to the beneficiary and the wages to the additional sponsored beneficiaries from their respective priority dates.

The NDI allowed the petitioner 30 days to submit a response to the NDI with a certificate of good standing or other proof that the petitioning business is currently in active status and to submit additional evidence of its ability to pay the proffered wage.

More than 30 days have passed since the issuance of the NDI, and the petitioner has failed to submit a response. 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 petitioner has not responded to the NDI or submitted the requested evidence. Therefore, the appeal must 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.

**ORDER:** The appeal is dismissed.