

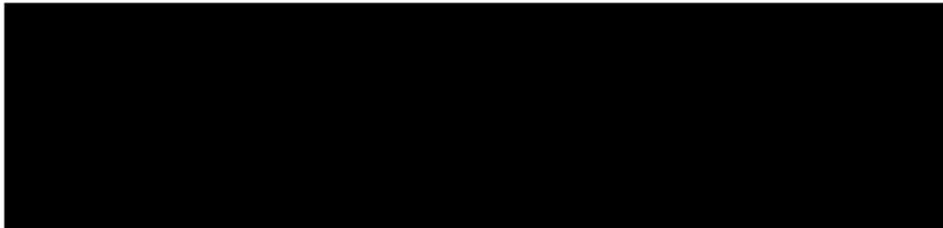
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

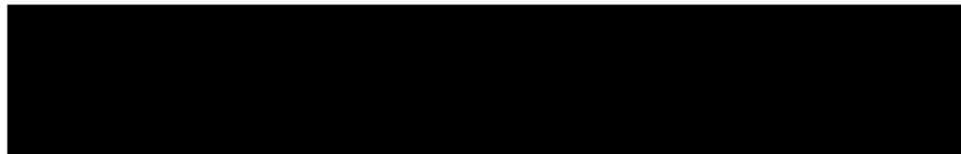


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Date: **FEB 23 2012** Office: TEXAS SERVICE CENTER

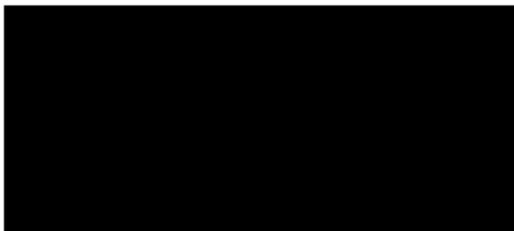
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(i)

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a gas station and convenience store. It seeks to employ the beneficiary permanently in the United States as a manager. 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 the continuing ability to pay the proffered wage to the beneficiary since the priority date. The director denied the petition accordingly.

The AAO issued a Notice of Intent to Dismiss (NOID) to counsel and the petitioner on January 6, 2012, informing the parties that a review of the website at [REDACTED] (accessed on December 27, 2011), revealed that the petitioner [REDACTED] was administratively dissolved on May 16, 2008, for failure to file its annual registration.

The AAO informed the parties that if the petitioner was no longer an active business, the petition and its appeal to this office have become moot.¹ In which case, the appeal shall be dismissed as moot. Therefore, the AAO requested that the petitioner provide a current certificate of good standing or other evidence demonstrating that the petitioning business is not inactive and had current business activity.

In addition, the AAO informed the parties that the record did not contain sufficient evidence demonstrating the petitioner's continuing ability to pay the proffered wage to the beneficiary since the priority date.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

¹ 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.

The priority date in the instant case is December 2, 2003, and therefore, the petitioner must establish the ability to pay the beneficiary the proffered wage of \$29,000.00 per year from that date until the beneficiary obtains lawful permanent residence. The AAO noted that the petitioner had only submitted its Forms 1120S, U.S. Income Tax Return for an S Corporation, for 2004, 2005, 2006 and 2007, and requested that the petitioner provide its complete federal tax returns or audited financial statements for 2003, 2008, 2009, and 2010. The AAO also requested that the petitioner submit all Forms W-2, Wage and Tax Statement, or Forms 1099-MISC issued to the beneficiary in 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011.

In the NOID, the AAO specifically alerted the petitioner and counsel that failure to respond to the NOID 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).

Although the NOID mailed to the petitioner at its last known address was returned by the United States Postal Service as undeliverable, the record reflects that the NOID mailed to counsel was not returned to the AAO. Therefore, service of the NOID must be considered complete pursuant to 8 C.F.R. § 103.5a. Because counsel and the petitioner failed to respond to the NOID, the AAO is dismissing the appeal.

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.