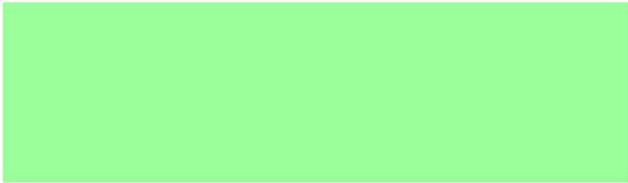


(b)(6)

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



DATE: **JUL 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 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 (the director). It then came before the Administrative Appeals Office (AAO) on appeal. On April 5, 2012, this office provided the petitioner with notice of adverse information in the record and afforded the petitioner an opportunity to provide evidence that might overcome this information.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as an Indian 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 the beneficiary met the minimum experiential requirements which are set forth on Form ETA 9089 for the performance of the proffered position. 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 notified the petitioner that according to the records at the website maintained by the Commonwealth of Virginia State Corporation Commission as well as to public records accessed through Westlaw's corporations database, the petitioner was terminated on July 31, 2008 and remains in the same status. *See* <https://cisiweb.scc.virginia.gov/instant.aspx> (accessed March 12, 2012).

This office also notified the petitioner that if it is currently terminated, 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 Commonwealth of Virginia State Corporation Commission 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. This office received a response on May 16, 2012. In a letter, dated May 15, 2012, counsel for the petitioner states that the petitioner has confirmed that the petitioning entity was sold and that the corporation was terminated. As such, counsel states that the petitioner is no longer in existence and he requests that the case be closed. Therefore, since the petitioner's organization is no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore moot.<sup>1</sup>

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<sup>1</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.

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.

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