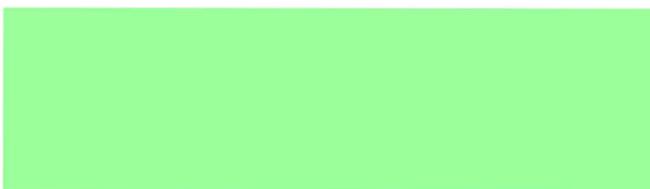




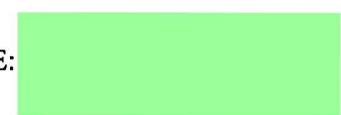
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 25 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:

SELF-REPRESENTED

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,

Kieran Forbes for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On April 27, 2012, this office provided the petitioner with notice of intent to dismiss and derogatory information and request for evidence (NOID) in the record and afforded the petitioner an opportunity to provide evidence that might overcome this information. The petitioner did not respond to the NOID. Therefore, the appeal will be dismissed.

The petitioner is an interstate trucking company. It seeks to employ the beneficiary permanently in the United States as an accounting manager 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 United States Department of Labor (DOL) accompanied the petition. The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position according to the terms of the labor certification or that the petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date and continuing until the beneficiary obtains lawful permanent residence. 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 27, 2012, this office notified the petitioner that according to the records at the official website maintained by the California Secretary of State, the petitioner is currently suspended. *See* [http://\[redacted\]](http://[redacted]) (accessed June 19, 2012).

This office also notified the petitioner that if it is currently suspended, 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 of the petitioner's continued existence, operation, and good standing. More than 30 days have passed and the petitioner has failed to respond to this office's NOID. Thus, the appeal will be dismissed.¹

¹ Additionally, as noted in the NOID, 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.

Further, on April 27, 2012, this office notified the petitioner that the record in this case also lacks conclusive evidence as to whether the petition is based on a bona fide job offer or whether a pre-existing family, business, or personal relationship may have influenced the labor certification. USCIS records indicate that the vice president of the petitioner, [REDACTED] is related to the beneficiary. [REDACTED] signed the Form I-140, the labor certification and the appeal. She and the beneficiary are related as sisters.

Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401 (Comm'r 1986), discussed a beneficiary's 50% ownership of the petitioning entity. The decision quoted an advisory opinion from the Chief of DOL's Division of Foreign Labor Certification as follows:

The regulations require a 'job opportunity' to be 'clearly open.' Requiring the job opportunity to be bona fide adds no substance to the regulations, but simply clarifies that the job must truly exist and not merely exist on paper. The administrative interpretation thus advances the purpose of regulation 656.20(c)(8). Likewise requiring the job opportunity to be bona fide clarifies that a true opening must exist, and not merely the functional equivalent of self-employment. Thus, the administrative construction advances the purpose of regulations 656.20.

Id. at 405. Accordingly, where the beneficiary named in an alien labor certification application has an ownership interest in the petitioning entity, the petitioner must establish that the job is *bona fide*, or clearly open to U.S. workers. See *Keyjoy Trading Co.*, 1987-INA-592 (BALCA Dec. 15, 1987) (*en banc*). A relationship invalidating a *bona fide* job offer may also arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000).

Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987).

This office allowed the petitioner 30 days in which to provide evidence regarding the relationship between the beneficiary and the petitioner's vice president, [REDACTED], and evidence that DOL was aware of that relationship when it certified the labor certification. The petitioner was asked to explain the relationship between the beneficiary and any other owners, officers or incorporators of the company, and provide evidence of that relationship and evidence that DOL was aware of that relationship when it certified the labor certification. The petitioner was asked to provide evidence of the ownership of the company including certified copies of the petitioner's articles of incorporation and certified copies of the corporation's stock ownership at the time of incorporation through the present to include any and all changes to the corporation's stock ownership. More than 30 days have passed and the petitioner has failed to respond to this office's request to establish that the job offer is *bona fide*. Thus, the appeal will be dismissed.

(b)(6)

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.