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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**

B6

DATE: **JAN 10 2012** OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

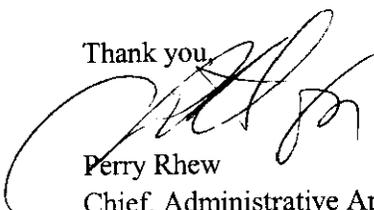
SELF-REPRESENTED

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 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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. On November 7, 2011, this office provided the petitioner with a notice of adverse information in the record and afforded the petitioner an opportunity to provide evidence that might overcome this information. The petitioner has not responded. The appeal will be dismissed.

The petitioner is a bakery. It seeks to employ the beneficiary permanently in the United States as a decorator (cake) pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to establish that it has the continuing financial ability to pay the proffered wage, and denied the petition, accordingly.

The petitioner filed an appeal on October 14, 2008, contending that the petitioner had established its ability to pay the proffered wage.

The AAO issued a Notice of Derogatory Information (NDI) and a Notice of Intent to Deny (NOID) on November 7, 2011.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).¹

On November 7, 2011, this office notified the petitioner that according to the records at the website maintained by the state of New York, the petitioner's business status is currently dissolved. *See* attached copy of the online state of New York website (accessed January 9, 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, remains a *bona fide* job offer. Further, the petitioner was notified that the record indicates that the corporate identity of the ETA 750 employer and the Form I-140 employer have widespread discrepancies in the information submitted, thus raising another issue of the *bona fides* of the job offer and the reliability of the financial information submitted. In addition to advising the petitioner of the status of online state corporation records, the AAO requested additional information relevant to the petitioner's ability to pay the proffered wage if it elected to respond to the NDI/NOID.

It is noted that any 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

¹The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

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 state of New York 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. More than 30 days have passed and the petitioner has failed to respond to this office's notice with the requested information and with a certificate of good standing or other proof that the petitioner remains in operation as a viable business or was in operation from the priority date onwards. Thus, the appeal will be dismissed as abandoned.²

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.

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.

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 6, 2012.

Selected Entity Name: [REDACTED]

Selected Entity Status Information

Current Entity Name: [REDACTED]

Initial DOS Filing Date: NOVEMBER 12, 1997

County: KINGS

Jurisdiction: NEW YORK

Entity Type: [REDACTED]

Current Entity Status: INACTIVE - Dissolution by Proclamation / Annulment of Authority (Jun 27, 2001)

Information to reinstate a corporation that has been dissolved by proclamation or annulment of authority by proclamation is available on the New York State Department of Taxation and Finance website at www.tax.ny.gov keyword TR-194.1 or by writing to NYS Department of Taxation and Finance, Reinstatement Unit/Bldg-8, Rm #958, W.A. Harriman Campus, Albany, NY 12227 or by telephone at [REDACTED]

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

[REDACTED]

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate

of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
NOV 12, 1997	Actual	[REDACTED]

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 6, 2012.

Selected Entity Name: [REDACTED]

Selected Entity Status Information

Current Entity Name: [REDACTED]

Initial DOS Filing Date: DECEMBER 15, 1994

County: KINGS

Jurisdiction: NEW YORK

Entity Type: [REDACTED]

Current Entity Status: INACTIVE - Dissolution by Proclamation / Annulment of Authority (Sep 23, 1998)

Information to reinstate a corporation that has been dissolved by proclamation or annulment of authority by proclamation is available on the New York State Department of Taxation and Finance website at www.tax.ny.gov keyword TR-194.1 or by writing to NYS Department of Taxation and Finance, Reinstatement Unit/Bldg-8, Rm #958, W.A. Harriman Campus, Albany, NY 12227 or by telephone at [REDACTED]

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Name History

Filing Date	Name Type	Entity Name
DEC 15, 1994	Actual	[REDACTED]

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 6, 2012.

Selected Entity Name: [REDACTED]

Selected Entity Status Information

Current Entity Name: [REDACTED]

Initial DOS Filing Date: DECEMBER 15, 1998

County: KINGS

Jurisdiction: NEW YORK

Entity Type: [REDACTED]

Current Entity Status: INACTIVE - Dissolution by Proclamation / Annulment of Authority (Jun 26, 2002)

Information to reinstate a corporation that has been dissolved by proclamation or annulment of authority by proclamation is available on the New York State Department of Taxation and Finance website at www.tax.ny.gov keyword TR-194.1 or by writing to NYS Department of Taxation and Finance, Reinstatement Unit/Bldg-8, Rm #958, W.A. Harriman Campus, Albany, NY 12227 or by telephone at [REDACTED]

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Name History

Filing Date	Name Type	Entity Name
DEC 15, 1998	Actual	[REDACTED]

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 6, 2012.

Selected Entity Name: [REDACTED]

Selected Entity Status Information

Current Entity Name: [REDACTED]

Initial DOS Filing Date: MARCH 08, 1999

County: KINGS

Jurisdiction: NEW YORK

Entity Type: [REDACTED]

Current Entity Status: INACTIVE - Dissolution by Proclamation / Annulment of Authority (Jun 25, 2003)

Information to reinstate a corporation that has been dissolved by proclamation or annulment of authority by proclamation is available on the New York State Department of Taxation and Finance website at www.tax.ny.gov keyword TR-194.1 or by writing to NYS Department of Taxation and Finance, Reinstatement Unit/Bldg-8, Rm #958, W.A. Harriman Campus, Albany, NY 12227 or by telephone at [REDACTED]

Selected Entity Address Information

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[REDACTED]

Registered Agent

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of incorporation, however this information is not recorded and only available by viewing the certificate.

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200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAR 08, 1999	Actual	[REDACTED]

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

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