

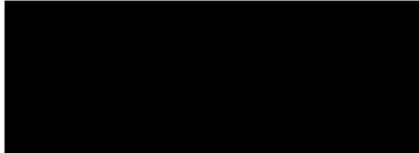
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: Office: NEBRASKA SERVICE CENTER

JAN 17 2012

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:



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, Nebraska Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On November 10, 2011, 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 software development business. It seeks to employ the beneficiary permanently in the United States as a software engineer. 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 continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director also determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On November 10, 2011, this office notified the petitioner that according to the records, [REDACTED] status is not in good standing in Maryland and its current status is forfeited. According to the Form I-140, the offered job is in the state of Maryland.

This office also notified the petitioner that, if it is currently not in good standing, 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.*

Counsel asserts in response to the AAO's Notice of Derogatory Information (NODI) that the petitioner is also a Delaware limited liability company (LLC), and that it is in good standing in Delaware. The petitioner submitted a copy of the Delaware Notice of Good Standing as of November 14, 2011. Counsel further asserted that the petitioner is in the process of revalidating its status in the state of Maryland. However, the petitioner did not submit any evidence of its attempts to revalidate its status in the state of Maryland. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter*

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner's status was forfeited by the state of Maryland on November 14, 2008, for failure to file a property return for 2008. The petitioner's corporate status remains forfeited in Maryland, as admitted by counsel, and shall be forfeited until such time that the petitioner revalidates its status. Furthermore, a period of time spanning the filing and approval of the Form ETA 750 and the filing of the instant petition has lapsed; and therefore, cannot be accounted for in evaluating the petitioner's ability to pay the proffered wage to the beneficiary. As such and as discussed in greater detail below, the petitioner did not exist under Maryland law and could not conduct business in that state as a legal non-entity.

The Maryland Corporations and Associations Code Annotated §3-514, prohibits an entity from doing business after forfeiture:

- (a) *Prohibition.* Any person who transacts business in the name or for the account of a corporation knowing that its charter has been forfeited and has not been revived is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$500.
- (b) *Presumption.* For the purpose of this section, unless there is clear evidence to the contrary, a person who was an officer or director of a corporation at the time its charter was forfeited is presumed to know of the forfeiture.
- (c) *Limitation.* A prosecution for violation of the provisions of this section may not be instituted after the date articles of revival of the corporation are filed.

Forfeiture is the process that allows the Maryland State Department of Assessments and Taxation (Department) to remove inactive entities that have not legally terminated their authority to do business or to notify active entities of an existing oversight in meeting legal filing requirements. A corporation can avoid forfeiture by filing a Form 1 (annual report/personal property return). If the Department declares the corporate charter to be forfeited, as it did in this case, the corporation becomes a non-entity. All powers of the corporation become null and void. Md. Corp. & Assns. Code Ann. §3-503(d). See, e.g., *Dual Inc. v. Lockheed Martin Corp.*, 857 A.2d 1095, 1101 (Md. 2004) ("A corporation, the charter for which is forfeit, is a legal non-entity; all powers granted to Dual, Inc. by law, including the power to sue or be sued, were extinguished generally as of and during the forfeiture period"); *Kroop & Kurland, P.A. v. Lambros*, 703 A.2d 1287 (Md. 1998) ("[w]hen a corporation's charter is forfeited for non-payment of taxes or failure to file an annual report, the corporation is dissolved by operation of law and ceases to exist as a legal entity").

The charter of any corporation which is forfeited may be revived by filing articles of revival; filing all annual reports required to be filed by the corporation or which would have been required if the charter had not been forfeited; and paying all unemployment insurance contributions, or reimbursement payments, all State and local taxes, except taxes on real estate, and all interest and penalties due by the corporation or which would have become due if the charter had not been forfeited. The revival of a corporation's charter has the following effects: all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them; and all the assets and rights of the corporation, except those sold or those of which it was otherwise divested while the charter was void, are restored to the corporation to the same extent that they were held by the corporation before the expiration or forfeiture of the charter. However, corporate action taken during a period when a corporation's charter is forfeited is null and void, and actions taken after its charter has been revived do not relate back to cure the loss of a right divested during the time the charter was forfeited. *Hill Constr. v. Sunrise Beach, LLC*, 952 A.2d 357 (Md. 2008).

In this matter, the petitioner's Maryland charter was forfeited on November 14, 2008. Accordingly, the petitioner is a legal non-entity. An entity which is a legal non-entity – an entity which has been dissolved by operation of law – cannot be said to be in business.

Although counsel claims that the petitioner is in good standing in Delaware, the I-140 is for a job offered in Maryland. As noted above, where a business is forfeited in the state of Maryland, it ceases to exist in Maryland. A labor certification is only valid for the particular job opportunity and for the geographic location described therein. 20 C.F.R. § 656.30(c)(2).

In addition to the reasons stated above, the appeal will also be dismissed in that the Form ETA 750 is for a job opportunity in Delaware, and therefore, the I-140 is not accompanied by a valid labor certificate for a job opportunity in Maryland. The offered position is in Maryland, a different metropolitan statistical area from Delaware. 20 C.F.R. § 656.30(c)(2).

Finally, it is noted that, if the AAO were to consider the merits of the instant appeal, it would dismiss the appeal for the same reasons as the director.

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.