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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

PUBLIC COPY

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Date: MAY 0 9 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) 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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On November 2, 2001, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an immigrant petition for alien worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on May 17, 2002. The director of the Texas Service Center (the director), however, revoked the approval of the immigrant petition on March 27, 2009, and the petitioner subsequently appealed the director's decision to revoke approval of the visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(i).[1] As required by statute, a labor certification approved by the U.S. Department of Labor (DOL) accompanied the petition. As noted above, the petition was initially approved in May 2002, but that approval was revoked in March 2009. The director in revoking the approval of the petition determined that the petitioner had not followed the DOL recruitment requirements and that the beneficiary did not have the requisite work experience in the job offered before the priority date.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

During the adjudication of the appeal, evidence has come to light that the petitioning corporation in this matter, [redacted] has been dissolved as of May 31, 2007. On March 13, 2012 this office sent a Request for Evidence and Notice of Derogatory Information (RFE/NDI) along with the evidence of the company's dissolution and indicated that if the petitioner is no longer an active business, the petition and its appeal to this office have become moot,[2] in which case the appeal shall be dismissed as moot. The petitioner was given 30 days to provide evidence showing that the business remains active and viable 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 request for a certificate of good standing or other proof that the petitioner remains in operation as a viable business. The AAO specifically alerted the petitioner that failure to respond to the RFE/NDI would result in dismissal of the appeal as moot.

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[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

[2] 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.

Because the petitioner failed to respond to the RFE/NDI, the AAO is dismissing the appeal as moot.[3] Further, since the appeal will be dismissed as moot, the AAO will not discuss other matters pertaining to whether or not the director's decision to revoke the approval of the petition was based on good and sufficient cause, as prescribed by section 205 of the Act; 8 U.S.C. § 1155, or whether the petitioner has the continuing ability to pay.

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.

[3] 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.