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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

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **SEP 04 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:
[Redacted]

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,

Kerr Palos for

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Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On June 4, 2012, this office provided the petitioner with a Notice of Intent to Dismiss and Derogatory Information and afforded the petitioner an opportunity to provide evidence that might overcome this information. The petitioner failed to respond to the Notice of Intent to Dismiss and Derogatory Information. Thus, the appeal will be dismissed.

The petitioner is a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a Quality Testing Engineer 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 (DOL) 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. Additionally, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The director determined that the beneficiary's credentials could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in Computer Science, Math, Engineering or Science, because the beneficiary held a three-year bachelor of science degree in Chemistry. 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).

As noted above, on June 4, 2012, this office issued a Notice of Intent to Dismiss and Derogatory Information wherein the petitioner was notified that according to a website maintained by the Secretary of State of Illinois, the petitioner's status to do business in the state of Illinois was revoked on November 14, 2008. *See* www.cyberdriveillinois.com (accessed April 4, 2012). The petitioner was requested to submit evidence to establish that the records maintained by the Secretary of State of Illinois 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 also notified the petitioner that if it is no longer in business, 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.*

Additionally, this office requested additional evidence concerning the actual minimum educational requirements of the offered position. The AAO explained that it consulted a database that did not equate the beneficiary's credentials to a U.S. baccalaureate degree and the evidence in the record of

proceeding as currently constituted did not support a determination that the petitioner intended the actual minimum requirements of the offered position to include alternatives to a bachelor degree such as the credentials held by the beneficiary. The AAO solicited additional evidence of the beneficiary's credentials and evidence of how the petitioner expressed its actual minimum educational requirements to the DOL during the labor certification process.

The petitioner was also requested to submit additional evidence to establish the petitioner's ability to pay the proffered wage of \$80,000 continuously from the priority date of March 17, 2005. Additionally, the petitioner was requested to submit evidence of its ability to pay the proffered wage for the other beneficiaries for whom the petitioner has filed immigrant and nonimmigrant visa petitions.

This office allowed the petitioner 30 days in which to provide the evidence requested above. More than 30 days have passed and the petitioner has failed to respond to this office's Notice of Intent to Dismiss and Derogatory Information. Thus, the appeal will be dismissed.¹

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.

¹ Additionally, as noted in the Notice of Intent to Dismiss and 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.