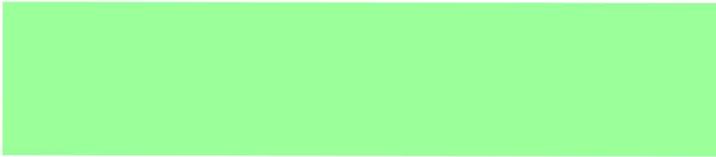


(b)(6)

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



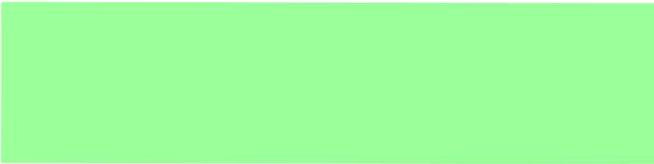
DATE: SEP 13 2012 OFFICE: NEBRASKA SERVICE CENTER

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:



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,

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 June 1, 2012, 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 restaurant. It seeks to employ the beneficiary permanently in the United States as a 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 Department of Labor accompanied the petition. The director determined that the petitioner had not submitted all the required initial evidence, including evidence to establish that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and evidence that the beneficiary met the minimum requirements of the labor certification. Therefore, the director denied the petition.¹

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

On June 1, 2012, this office notified the petitioner that according to the records at the Illinois Secretary of State website, the petitioner is currently dissolved. *See* <http://www.ilsos.gov/corporatellc/CorporateLlcController> (accessed May 16, 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, 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 that the records maintained by the Illinois Secretary of State 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. A response was received on July 2, 2012, but it did not contain 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. Rather, counsel acknowledges that the petitioner is no longer in business and requests that

¹ If all required initial evidence is not submitted with the application or petition, or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS), in its discretion, may deny the petition. 8 C.F.R. § 103.2(b)(8)(ii)(rule effective for all petitions filed on or after June 18, 2007). The instant petition was filed on February 28, 2008, and thus, is subject to this rule.

the petitioner's owner, [REDACTED] be allowed to substitute another business he owns, [REDACTED], in place of the petitioner.

The AAO notes that a labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). There is no provision or procedure in law or policy to permit substitution of employers on certified labor certification applications. If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

On appeal, counsel has not asserted that [REDACTED] is a successor-in-interest to the petitioner and has not submitted evidence to that effect.

Thus, the appeal will be dismissed as moot.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.