



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **AUG 16 2013** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

*Rachel NiTorio*  
For

Ron Rosenberg  
Chief, Administrative Appeals Office

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**DISCUSSION:** The Acting Director, Vermont Service Center (acting director) revoked the approval of the employment-based immigrant visa petition. The revocation was affirmed by the Director, Vermont Service Center (director) in response to a motion to reopen filed by the petitioner. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed as moot.

The petitioner describes itself as a business providing facility management, and commercial and residential cleaning. It seeks to permanently employ the beneficiary in the United States as a cleaner. The petitioner requests classification of the beneficiary as an unskilled worker pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). The petition is accompanied by a labor certification approved by the U.S. Department of Labor (DOL).

The acting director's decision to revoke the approval of the petition was based on information provided by the beneficiary at her June 7, 2001 interview. At that time, the acting director indicated, the beneficiary had stated that she was working for the petitioner only on a part-time basis. The acting director found the beneficiary's statements to demonstrate that she did not intend to work for the petitioner and revoked the approval of the petition on that basis. The acting director further stated that the revocation was supported by "previous incident[s] of labor substitution fraud that have been encountered involving the petitioner and attorney."

On appeal, the petitioner contends that it has the intention of employing the beneficiary on a full-time basis and that the beneficiary intends to accept full-time employment with its business.

The appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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.<sup>1</sup>

On June 14, 2013, the AAO issued a Notice of Intent to Dismiss, Notice of Derogatory Information and Request for Evidence to the petitioner. In this notice, the AAO informed the petitioner that its claim to be a successor-in-interest to [REDACTED], the employer that originally filed the Form ETA 750, Application for Alien Employment Certification, with DOL on January 31, 1990, was not supported by the record. The AAO also notified the petitioner of evidence that indicated it had changed its name from [REDACTED] to [REDACTED] asking it to submit documentation establishing this change in title, as well as proof

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 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).

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that the change in its name did not reflect a change in its operations. The AAO further requested that the petitioner document its relationship to [REDACTED] and [REDACTED]

The June 14, 2003 Notice of Intent to Dismiss, Notice of Derogatory Information and Request for Evidence also informed the petitioner that the record did not establish its ability to pay the proffered wage to the beneficiary pursuant to the regulation at 8 C.F.R. § 204.5(g)(2) and asked it to document its ability to pay the proffered wage as of June 1, 1998, the date it indicated it had acquired the business of [REDACTED] and to provide evidence of [REDACTED] ability to pay the proffered wage from the January 31, 1990 priority date until June 1, 1998. The notice further requested evidence of the petitioner's ability to pay the proffered wages of the other beneficiaries for whom it had filed Form I-140, Immigrant Petition for Alien Worker, petitions.

Finally, the June 14, 2003 notice stated that the AAO did not find the beneficiary's signature on the new labor certification submitted by the petitioner to be genuine. The notice further indicated that the petitioner's submission of what appeared to be a fraudulent document in support of the Form I-140 petition raised serious doubts regarding its intent to employ the beneficiary in the offered position.

In response,<sup>2</sup> the petitioner submitted a letter on July 17, 2013, signed by [REDACTED] its former Human Resources Director and the individual whose name appears on the Form ETA 750 and Form I-140 petition filed on behalf of the beneficiary in this matter. In his letter, Mr. [REDACTED] states that the petitioner sold its operations in the fall of 2011 and is no longer in business. As the petitioner is no longer in business, the AAO finds that the appeal relating to the revocation of the approval of the instant Form I-140 petition is moot.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 As (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed as moot.

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<sup>2</sup> The beneficiary also responded to the AAO's June 14, 2013 notice, asserting that the differences between her signature on the labor certification and that on the Form I-485, Application to Register Permanent Residence or Adjust Status, resulted from the printing of her name in English, [REDACTED] and her signature, [REDACTED]. She states that, while still in [REDACTED], she used her signature stamp for signing.