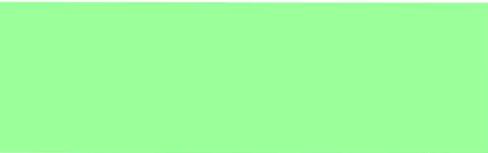


(b)(6)

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



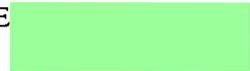
U.S. Citizenship  
and Immigration  
Services



DATE:

OFFICE: NEBRASKA SERVICE CENTER

FILE

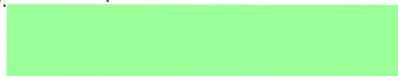


**FEB 19 2013**

IN RE:

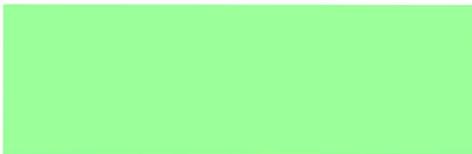
Petitioner:

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,

*Rachel Pitino*  
for

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center (the director). It then came before the Administrative Appeals Office (AAO) on appeal. On July 9, 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 general machine shop. It seeks (or sought) to employ the beneficiary permanently in the United States as a mechanic, 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 demonstrated the ability to pay the proffered wage from the priority date until the beneficiary obtained lawful permanent residence. 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).

On July 9, 2012, this office notified the petitioner that, according to the website maintained by the California Secretary of State, Business Entities Division, the petitioner ( ) was suspended on October 1, 2008. *See* <http://kepler.sos.ca.gov/cbs.aspx> (accessed June 13, 2012 and January 9, 2013).

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 public records reflected by the California Secretary of State, Business Entities Division database 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. In the notice, this office indicated that the AAO would be unable to adjudicate the appeal substantively without a meaningful response to the issue set forth in the notice. The AAO further indicated that, if the petitioner chose not to respond to the notice, the AAO would dismiss the appeal without further discussion. *See* 8 C.F.R. § 103.2(b)(13)(i).

On August 10, 2012, this office received a response from the petitioner. The petitioner's response consisted solely of copies of the petitioner's U.S. Income Tax Return for an S Corporation (Form 1120S) for 2009 and 2010. The petitioner failed to address the contents of the notice of intent to dismiss (NOID) and provided no evidence demonstrating that the petitioning company is currently in good standing with the state of California and is permitted by the state to conduct business.

According to the California Secretary of State, Business Entities Division, database, as of January 9, 2013, the petitioning entity remains suspended. According to public records accessed through Westlaw, which were supplied to the petitioner with the AAO's NOID, the petitioner's business was suspended by the California Franchise Tax Board.

On its website, in a section addressing frequently asked questions, the California Franchise Tax Board addresses reasons for suspending businesses,<sup>1</sup> stating:

We suspend businesses for at least one of the following reasons:

- Failure to file one or more tax returns.
- Failure to pay the business' balance due. This can include the penalty for failing to file the annual Statement of Information with the Secretary of State.

Suspension or forfeiture affects a business in many ways:

- The business loses its rights, powers, and privileges to conduct business in California.
- The business loses the right to use its business name in California. In turn, another business could register with the suspended or forfeited business' name, and the name would then belong to the other business.
- The business cannot initiate lawsuits, defend itself against lawsuits, or enforce its legal contracts. But other parties can enforce their terms in these contracts.
- If the business enters contracts while suspended or forfeited, it can never enforce those contracts unless it obtains relief of contract voidability.
- Suspensions and forfeitures are public information.
- The business loses the right to get an extension to file a tax return.

The California Secretary of State Corporate Entities Division website also contains a section addressing FAQs and includes questions relating to suspension notices from the Secretary of State and the Franchise Tax Board.

### **I received a notice of pending suspension/forfeiture, what do I do?**

Please follow the instructions in the notice. If you have not yet filed the required statement, statement forms are available on our **Statements of Information** webpage. Note: To avoid suspension/forfeiture of the entity's powers, rights and privileges (including the right to use the entity name), the statement must be received and filed by the California Secretary of State no later than 60 days from the Notice Date that appears on the Notice of Pending Suspension/Forfeiture.

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<sup>1</sup> See <https://www.ftb.ca.gov/businesses/faq/728.shtml>.

### **How was I to know that I had to file a Statement of Information?**

By statute,<sup>2</sup> the entity is required to file a **Statement of Information**<sup>3</sup> on an annual or biennial basis, as applicable. In addition, the Secretary of State mails a reminder postcard to a business entity's address of record approximately three months prior to the date its filing is due. If a business entity then fails to file the required statement, it is provided a notice of delinquency and an additional 60-days in which to file. Note: It is a business entity's responsibility to submit a statement even if it did not receive the reminder or the notice of delinquency.

### **Why is my business entity suspended/forfeited and how do I revive it?**

A business entity's powers, rights and privileges can be suspended or forfeited in California by (1) the Secretary of State for failure to file the required Statement of Information; and/or (2) the Franchise Tax Board for failure to file a tax return and/or failure to pay taxes, penalties or interest. Subject to the availability of the business entity name, an entity suspended or forfeited by the:

- **Secretary of State** can be revived by filing a current Statement of Information with this office. Note: A common interest development corporation must also submit a Statement by Common Interest Development Association (Form SICID) together with the Statement of Information. Statement forms are available on the **Statements of Information** webpage. Please refer to the applicable form for complete filing instructions, fees and relevant statutory filing provisions.
- **Franchise Tax Board** must contact the **Franchise Tax Board** for revivor requirements.
- **Secretary of State and Franchise Tax Board** should first file a current Statement of Information with the Secretary of State and obtain a letter of proposed relief from suspension or forfeiture. Upon receipt of the proposed relief letter from the Secretary of State, the business entity should complete an Application for Certificate of Revivor (Form FTB 3557) and submit the application along with a copy of the proposed relief letter to the Franchise Tax Board. Note: The business entity will remain suspended by the Secretary of State until **both** the Secretary of State and Franchise Tax Board revivor requirements have been met.

According to both the California Secretary of State and the California Franchise Tax Board, the Franchise Tax Board may suspend a business for failure to file a tax return and/or for failure to pay

<sup>2</sup> California Corporations Code § 1502 - <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=01001-02000&file=1500-1512> (accessed January 9, 2013 ).

<sup>3</sup> See <http://www.sos.ca.gov/business/be/statements.htm>.

taxes, penalties, or interest. Further, according to the Franchise Tax Board, once suspended, a business "loses its rights, powers, and privileges to conduct business in California."

In this matter, the petitioner's corporate status was suspended on October 1, 2008 subsequent to the filing of the I-140 petition, but prior to the filing of the instant appeal. Further, according to the California Secretary of State, Corporate Entities Division, the petitioning entity remains suspended. According to public records, accessed through Westlaw, the petitioner was suspended by the California Franchise Tax Board. Additionally, although the petitioner provided copies of its federal income tax returns for 2009 and 2010, it has not provided evidence demonstrating that it is a corporation in good standing with the state of California and that is permitted by the state to continue conducting business. For this reason, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation due to the "termination of the employer's business." 8 C.F.R. § 205.1(a)(3)(iii)(D).

Therefore, the petitioner has failed to demonstrate that it remains in operation as a viable business or that it was permitted to continue operating under California law from the priority date onwards. Thus, the appeal will be dismissed as moot.<sup>4</sup>

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.

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<sup>4</sup> Additionally, as noted in the NOID, 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.