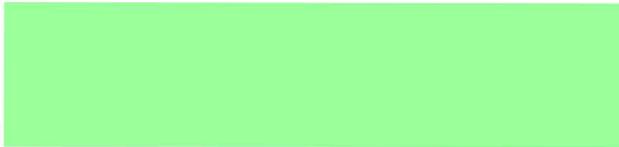




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **FEB 19 2013**

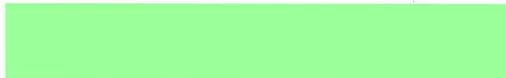
OFFICE: NEBRASKA SERVICE CENTER

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,

*Rachel Vi Forno*  
for

Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center (the director). The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO rejected the appeal as being untimely filed and returned the matter to the director for consideration as a motion to reopen. The director affirmed the previous decision, and the petition remained denied. The petitioner appealed the decision to the AAO. 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 retail travel agency. It seeks (or sought) to employ the beneficiary permanently in the United States as a travel consultant, 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 June 1, 2012, this office notified the petitioner that, according to the website maintained by the Maryland Department of Assessments and Taxation, Business Services, the petitioner's business [REDACTED] was forfeited on October 1, 2010. *See*

[REDACTED]  
(accessed April 21, 2012, October 3, 2012, and January 8, 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 Maryland Department of Assessments and Taxation, Business Services, 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 AAO's 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 July 2, 2012, this office received a response from the petitioner. In response, the petitioner acknowledged that the reason that the petitioner's business was forfeited was the result of having failed to file its Personal Property Tax Return for 2009. In response, the petitioner asserted that, subsequent to the AAO's notice of intent to dismiss (NOID), the petitioner submitted the 2009 Personal Property Tax Return along with the required \$300.00 filing fee. The petitioner asserted that, notwithstanding the business forfeiture, it continued to operate since 1993.

The AAO accessed the Maryland Department of Assessments and Taxation, Business Services website on at least two occasions since receiving the petitioner's response (October 3, 2012 and January 8, 2013). According to the website, the petitioner's status is still forfeited. On January 8, 2013, the AAO contacted the Maryland Department of Assessments and Taxation, Business Services, and was told that their office had received the petitioner's 2009 Personal Property Tax Return. However, there is no record that the petitioner submitted required Articles of Revival. Therefore, they informed the AAO that the petitioning entity remains forfeited.

The Maryland Corporations and Associations Code Annotated §3-514, prohibits an entity from doing business after forfeiture:

- (a) *Prohibition.* Any person who transacts business in the name or for the account of a corporation knowing that its charter has been forfeited and has not been revived is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$500.
- (b) *Presumption.* For the purpose of this section, unless there is clear evidence to the contrary, a person who was an officer or director of a corporation at the time its charter was forfeited is presumed to know of the forfeiture.
- (c) *Limitation.* A prosecution for violation of the provisions of this section may not be instituted after the date articles of revival of the corporation are filed.

Forfeiture is the process that allows the Maryland State Department of Assessments and Taxation (Department) to remove inactive entities that have not legally terminated their authority to do business or to notify active entities of an existing oversight in meeting legal filing requirements. A Maryland corporation may avoid forfeiture by filing a Form 1 (annual report/personal property return). If the Department declares the corporate charter to be forfeited, as it did in this case, the corporation becomes a non-entity. All powers of the corporation become null and void. Md. Corp. & Assns. Code Ann. §3-503(d). *See, e.g., Dual Inc. v. Lockheed Martin Corp.*, 857 A.2d 1095, 1101 (Md. 2004) ("A corporation, the charter for which is forfeit, is a legal non-entity; all powers granted to Dual, Inc. by law, including the power to sue or be sued, were extinguished generally as of and during the forfeiture period"); *Kroop & Kurland, P.A. v. Lambros*, 703 A.2d 1287 (Md. 1998) ("[w]hen a corporation's charter is forfeited for non-payment of taxes or failure to file an annual report, the corporation is dissolved by operation of law and ceases to exist as a legal entity").

The charter of any corporation which is forfeited may be revived by filing Articles of Revival; filing all annual reports required to be filed by the corporation or which would have been required if the charter had not been forfeited; and paying all unemployment insurance contributions, or reimbursement payments, all state and local taxes, except taxes on real estate, and all interest and penalties due by the corporation or which would have become due if the charter had not been forfeited. The revival of a corporation's charter has the following effects: all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them; and all the assets and rights of the corporation, except those sold or those of which it was otherwise divested while the charter was void, are restored to the corporation to the same extent that they were held by the corporation before the expiration or forfeiture of the charter. However, corporate action taken during a period when a corporation's charter is forfeited is null and void, and actions taken after its charter has been revived do not relate back to cure the loss of a right divested during the time the charter was forfeited. *Hill Constr. v. Sunrise Beach, LLC*, 952 A.2d 357 (Md. 2008).

In this matter, the petitioner's Maryland corporate charter was forfeited on October 1, 2010 subsequent to the filing of the instant appeal. However, according to the Maryland Department of Assessments and Taxation, the petitioning entity remains forfeited because it has not filed Articles of Revival. Additionally, the petitioner, although providing evidence of having submitted its 2009 Personal Property Tax Return, has not provided evidence that it paid all unemployment insurance contributions, or reimbursement payments, all state and local taxes, except taxes on real estate, and all interest and penalties due by the corporation or which would have become due if the charter had not been forfeited, as required by Maryland statute. Accordingly, the petitioner has been a legal non-entity since October 1, 2010. An entity which is a legal non-entity – an entity which has been dissolved by operation of law – cannot be said to be in 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 was permitted to continue operating under Maryland law from the priority date onwards. Thus, the appeal will be dismissed as moot.<sup>1</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>1</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.