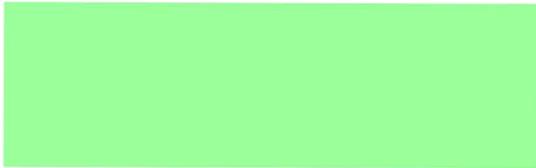




U.S. Citizenship  
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Services

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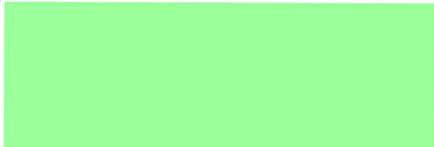


DATE: FEB 21 2013 OFFICE: TEXAS SERVICE CENTER FILE:

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** On July 24, 2003, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on April 20, 2004. The director of the Texas Service Center (the director), however, revoked the approval of the immigrant petition on November 2, 2010, and the petitioner subsequently appealed the director's decision to revoke the petition's approval to the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The petition will be remanded.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner is a retail store. It seeks to employ the beneficiary permanently in the United States as a retail store manager pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).<sup>1</sup> As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. As stated earlier, this petition was approved on April 20, 2004 by the VSC, but that approval was revoked in November 2010. The director determined that the petitioner failed to follow the U.S. Department of Labor (DOL) recruitment procedures in connection with the approved labor certification application and that the documents submitted in response to the director's Notice of Intent to Revoke (NOIR) were in themselves a willful misrepresentation of material facts, constituting fraud.

On appeal, counsel for the petitioner<sup>2</sup> contends that the director has improperly revoked the approval of the petition. Specifically, counsel asserts that the director did not have any good and sufficient cause as required by section 205 of the Act; 8 U.S.C. § 1155 to revoke the approval of the

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

<sup>2</sup> Current counsel of record, [REDACTED], will be referred to as counsel throughout this decision. Former counsel to the petitioner was [REDACTED]. He was under USCIS investigation for allegedly submitting fraudulent Form ETA 750 labor certification applications and Form I-140 immigrant worker petitions, when the director sent a Notice of Intent to Revoke (NOIR) to the petitioner on February 12, 2009. Mr. [REDACTED] has since been suspended from practice before the United States Department of Homeland Security for three years from March 1, 2012. Mr. [REDACTED] representations in this matter will be considered. He will be referred to throughout this decision by name.

petition. Counsel argues that the petitioner did comply with the DOL recruitment requirements and that the beneficiary possessed the minimum requirements required on the ETA 750 prior to the filing of the labor certification application.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. 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>3</sup>

The threshold issue on appeal is whether the director adequately advised the petitioner of the basis for revocation of approval of the petition. As noted above, the Secretary of DHS has the authority to revoke the approval of any petition approved by her under section 204 for good and sufficient cause. *See* section 205 of the Act; 8 U.S.C. § 1155. This means that notice must be provided to the petitioner before a previously approved petition can be revoked. More specifically, the regulation at 8 C.F.R. § 205.2 reads:

(a) *General.* Any [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition **upon notice to the petitioner** on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this [USCIS]. (emphasis added).

Further, the regulation at 8 C.F.R. § 103.2(b)(16) states:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

Moreover, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987) provide that:

A notice of intention to revoke the approval of a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. However,

<sup>3</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 the regulation at 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).

where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa petition cannot be sustained.

Here, in the NOIR dated February 12, 2009, the director wrote:

The Service is in receipt of information revealing the existence of fraudulent information in the petitions with Alien Employment Certificates (ETA 750) and/or the work experience letters in a significant number of cases submitted to USCIS by counsel for the petitioner in the reviewed files.

The director advised the petitioner in the NOIR that the instant case might involve fraud, since the petition was filed by Mr. [REDACTED]. The director also generally asked the petitioner to submit additional evidence to demonstrate that it had complied with all of the DOL recruiting requirements.

The AAO finds that while the director appropriately reopened the approval of the petition by issuing the NOIR, the director's NOIR was deficient in that it did not specifically give the petitioner notice of the derogatory information specific to the current proceeding. In the NOIR, the director questioned the beneficiary's qualifications and indicated that the petitioner had not properly advertised for the position. The NOIR neither provided nor referred to specific evidence or information relating to the petitioner's failure to comply with DOL recruitment or to the beneficiary's lack of qualifications in the present case. The director did not state which recruitment procedures were defective. Without specifying or making available evidence specific to the petition in this case, the petitioner can have no meaningful opportunity to rebut or respond to that evidence. See *Ghaly v. INS*, 48 F.3d 1426, 1431 (7th Cir. 1995). Because of insufficient notice to the petitioner of derogatory information, the director's decision will be withdrawn.

Another issue raised on appeal is whether the director properly concluded that the petitioner did not comply with the recruitment procedures of the DOL. The director indicated that the petitioner did not conduct good faith recruitment and found that the petitioner had engaged in fraud or material misrepresentation with respect to the recruitment process. The AAO disagrees. The record does not show inconsistencies or anomalies in the recruitment process that would justify the issuance of a NOIR based on the criteria of *Matter of S & B-C*, 9 I&N Dec. 436, 447 (A.G. 1961). Therefore, the director's conclusion that the petitioner did not comply with DOL requirements is withdrawn.

The AAO will next address the director's finding that the petitioner engaged in fraud and/or material misrepresentation. On appeal, counsel contends that the director's finding of fraud or willful misrepresentation against the petitioner was arbitrary and based on a USCIS investigation of other petitioners that had been represented by the same counsel, Mr. Dvorak.

With regard to immigration fraud, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person who knowingly or

willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of DHS has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

The administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation for any issue of fact that is material to eligibility for the requested immigration benefit. Within the adjudication of the visa petition, a finding of fraud or material misrepresentation will undermine the probative value of the evidence and lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591-592.

Outside of the basic adjudication of visa eligibility, there are many critical functions of DHS that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by USCIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For these provisions to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.<sup>4</sup>

Section 204(b) of the Act states, in pertinent part, that:

After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition . . . .

Pursuant to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. Section 212(a)(6)(C) of the Act governs misrepresentation and states the following: "Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to

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<sup>4</sup> It is important to note that, while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. See *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. See sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a). Nevertheless, the AAO and USCIS have the authority to enter a fraud finding, if during the course of adjudication, the record of proceedings discloses fraud or a material misrepresentation.

procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."

The Attorney General has held that a misrepresentation made in connection with an application for a visa or other document, or with entry into the United States, is material if either:

- (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

*Matter of S & B-C-*, 9 I&N Dec. at 447. Accordingly, the materiality test has three parts. First, if the record shows that the alien is inadmissible on the true facts, then the misrepresentation is material. *Id.* at 448. If the foreign national would not be inadmissible on the true facts, then the second and third questions must be addressed. The second question is whether the misrepresentation shut off a line of inquiry relevant to the alien's admissibility. *Id.* Third, if the relevant line of inquiry has been cut off, then it must be determined whether the inquiry might have resulted in a proper determination that the foreign national should have been excluded. *Id.* at 449.

Furthermore, a finding of misrepresentation may lead to invalidation of the Form ETA 750. See 20 C.F.R. § 656.31(d) regarding labor certification applications involving fraud or willful misrepresentation:

Finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be invalidated, processing is terminated, a notice of the termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate.

Here, as noted above, the evidence of record currently does not support the director's finding that the petitioner failed to follow recruitment procedures. Similarly, there has been an insufficient development of the facts upon which the director can make a determination of fraud or willful misrepresentation in connection with the labor certification process based on the criteria of *Matter of S & B-C-*, 9 I&N Dec. at 447. Thus, the director's finding of fraud or misrepresentation is withdrawn. In summary, the AAO withdraws the director's conclusion that the petitioner failed to follow DOL recruitment requirements. The AAO also withdraws the petitioner's finding of fraud and material misrepresentation against the petitioner.

Additionally, the AAO finds that the record supports the petitioner's contention that the beneficiary had the requisite work experience in the job offered before the priority date. Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that, on the priority date, the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition.

Here, the Form ETA 750 was filed and accepted for processing by DOL on September 21, 2001. The name of the job title or the position for which the petitioner seeks to hire is "Manager, Retail Store." Under the job description, section 13 of the Form ETA 750, part A, the petitioner wrote:

Manages retail store; performing following duties personally or supervising employees performing duties; plans and prepares work schedules and assigns employees to specific duties. Formulates pricing policies on merchandise according to requirements for profitability of store operations. Coordinates sales promotion. Supervises employees.

Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered.

On the Form ETA 750, part B, signed by the beneficiary on March 22, 2001, he represented that he worked as a retail manager at [REDACTED] in New York from February 1994 to December 1996. The record contains the following evidence to demonstrate that the beneficiary possessed the minimum requirements for the job offered:

- A letter of employment verification on [REDACTED] letterhead dated March 24, 2001 from [REDACTED] President, stating that the beneficiary worked as a retail manager at "our business" from February 1994 to December 1996;<sup>5</sup>
- A letter of employment verification dated February 26, 2009 from [REDACTED] President, stating that the beneficiary "worked at our business (which we no longer own, [REDACTED] New York, NY 11435) as a retail manager from February 1994 to December 1996;" and
- A handwritten letter dated February 26, 2009 from the beneficiary confirming that he did work at [REDACTED] from February 1994 to December 1996, that he contacted the previous owner and was able to obtain a letter of employment verification, but that he does not have any other record to show his employment at [REDACTED]

Based on the evidence submitted above, we are persuaded that the beneficiary more likely than not possessed the requisite work experience in the job offered as of the priority date and that he qualifies to be classified as a skilled worker (requiring two or more years in the job offered) in this case. The letters of employment verification dated March 24, 2001 and February 26, 2009 from [REDACTED] contain the name, title, and address of the author and lists a specific description of the duties

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<sup>5</sup> A search of the record of the New York Department of State, Corporations Division, reveals that [REDACTED] was incorporated on January 16, 1992, that [REDACTED] was the Chief Executive Officer of the organization, and that the business was dissolved as of December 27, 2000. The record of the New York Department of State, Corporations Division, can be accessed online at the following website: [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html) (last accessed January 24, 2013).

performed by the beneficiary, as required by the regulations at 8 C.F.R. §§ 204.5(g)(1) and (1)(3)(ii)(A).

Nonetheless, the petitioner must establish its ability to pay the proffered wage from the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 204.5(g)(2), in pertinent part, provides:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

As stated earlier, the priority date or the date when the ETA 750 labor certification was accepted for processing by DOL is September 21, 2001. The rate of pay or the proffered wage specified on the ETA 750 is \$11 per hour or \$20,020 per year based on a 35 hour work week.<sup>6</sup> Therefore, the petitioner is required to demonstrate the ability to pay \$11 per hour or \$20,020 per year from September 21, 2001 and continuing until the beneficiary receives lawful permanent residence, or until the beneficiary ported to another similar employment in 2007.<sup>7</sup>

<sup>6</sup> The total hours per week indicated on the approved Form ETA 750 is 35 hours. This is permitted so long as the job opportunity is for a permanent and full-time position. *See* 20 C.F.R. § 656.3; 656.10(c)(10). The DOL Memo indicates that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994).

<sup>7</sup> It is not clear when the beneficiary ported (changed employment), pursuant to section 204(j) of the Act. The record contains a letter dated February 1, 2007 from Mr. [REDACTED] notifying USCIS of the beneficiary's change of employment. In the same letter, Mr. [REDACTED] also requested that the beneficiary's Application to Register Permanent Residence or Adjust Status (Form I-485) be continued pursuant to section 204(j) of the Act. Submitted along with the letter from Mr. [REDACTED] was a letter dated January 24, 2007 from [REDACTED] President, stating that the beneficiary currently works full time at the [REDACTED] as a manager.

Section 204(j) of the Act, 8 U.S.C. § 1154(j), provides that an employment-based immigrant visa

To demonstrate the ability to pay, the petitioner submitted the following evidence:

- Copies of Internal Revenue Service (IRS) Forms 1120S U.S. Income Tax Return for an S Corporation for the years 2000 and 2001;<sup>8</sup> and
- A copy of IRS Form W-2 Wage and Tax Statement issued by the petitioner to the beneficiary for the year 2004.

Further, a review of USCIS electronic databases reveals that the petitioner has previously filed one (1) other immigrant petition. The table below shows the details of the other petition that the petitioner filed:

<i>Receipt Number</i>	<i>Beneficiary's Last Name</i>	<i>Decision</i>	<i>Date Adjusted to Lawful Permanent Residence (LPR)</i>
[REDACTED]	[REDACTED]	Approved	02/17/2009

Consistent with 8 C.F.R. § 204.5(g)(2), the petitioner is, therefore, required (unless disputed) to establish the ability to pay the proffered wage of the current beneficiary and also of *all* other beneficiaries listed above from the date of filing each respective labor certification application until the date each beneficiary obtains lawful permanent residence, or until the beneficiary in this case ported, pursuant to section 204(j) of the Act.

Based on the evidence submitted, the beneficiary received the following wage from the petitioner in 2004:

- \$7,200 (\$12,820 less than the proffered wage of \$20,020 per year).

The record also includes a copy of the petitioner's federal tax return filed on a Form 1120S U.S. Income Tax Return for an S Corporation for 2001, showing the petitioner's net income and net current assets as follows:

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petition shall remain valid with respect to a new job if the beneficiary's application for adjustment of status has been filed and remained unadjudicated for 180 days. Additionally, we note that section 204(j) of the Act does not apply to an immigrant visa petition process (Form I-140), but to an application for adjustment of status (Form I-485). In order to adjust his status to that of lawful permanent residence, the beneficiary will be required to demonstrate that his employment with the ported employer is in the same or similar occupational classification as the job for which the visa petition was approved. *See Perez-Vargas v. Gonzales*, 478 F.3d 191, 193 (4<sup>th</sup> Cir. 2007); *also see Sung v. Keisler*, 505 F.3d 372, 374 (5<sup>th</sup> Cir. 2007).

<sup>8</sup> We will not consider the petitioner's tax return for the year 2000 as the petitioner is only required to demonstrate the ability to pay from the priority date (September 21, 2001).

- Net Income<sup>9</sup> of \$82,428 (exceeds the proffered wage of \$20,020 per year); and
- Net Current Assets<sup>10</sup> of \$67,383 (exceeds the proffered wage of \$20,020 per year).

Therefore, the petitioner has demonstrated that it has the ability to pay the proffered wage in 2001, but since the petitioner has filed at least one other petition in this case, the AAO cannot conclude that the petitioner has the ability to pay the proffered wages of the two beneficiaries it sponsored. The evidence submitted above is not sufficient to demonstrate that the petitioner has the continuing ability to pay the proffered wages of the beneficiary in the instant case and of the other beneficiary from their respective priority date and continuing until the beneficiary either receives lawful permanent residence or until he ported in 2007.

Beyond the decision of the director, a search of the Massachusetts Secretary of State, Corporations Division's website reveals that the petitioner's business has been dissolved as of July 2, 2007.<sup>11</sup> If the petitioning business has been dissolved and is no longer an active business, then no *bona fide* job offer exists and the petition and its appeal to this office may also have become moot.<sup>12</sup> Further, even if the appeal could be otherwise sustained, the approval of the

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<sup>9</sup> For an S Corporation, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S if the S corporation's income is exclusively from a trade or business. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 17e (2004-2005) of Schedule K. See Instructions for Form 1120S, 2005, at <http://www.irs.gov/pub/irs-prior/i1120s--2005.pdf> (last accessed May 18, 2011) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). In the instant case, the net income is found on line 23 of schedule K.

<sup>10</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

<sup>11</sup> The information concerning the dissolution of the petitioner is accessible online at the following online address: <http://corp.sec.state.ma.us/corp/corptest/corpsearchinput.asp> (last accessed January 24, 2013).

<sup>12</sup> Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, 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.

petition would be subject to automatic revocation due to the termination of the petitioning organization's business. See 8 C.F.R. § 205.1(a)(iii)(D).

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for review and consideration of the additional issues that impact the petitioner's eligibility for the visa that were not initially identified by the director. The director may issue a new notice of intent to revoke approval of the petition and may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director may review the entire record and enter a new decision. If the new decision is contrary to the AAO's findings, it should be certified to the AAO for review.

**ORDER:** The director's decision to revoke the previously approved petition is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.