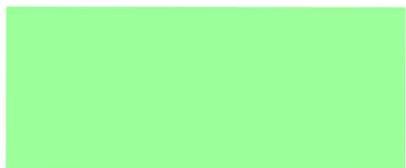


(b)(6)

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: **JAN 31 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

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DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on January 25, 2010, the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reopen/reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner was a business providing laundry and alteration services. It sought to employ the beneficiary permanently in the United States as an alterations tailor and to classify her as a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established it had the continuing ability to pay the proffered wage to the beneficiary since the priority date. The director denied the petition accordingly. The petitioner filed a timely appeal.

On January 25, 2010, the AAO dismissed the petitioner's appeal upholding the director's decision to deny the petition. The reasons for the dismissal of the appeal are set forth in the AAO's decision.

The AAO issued a Notice of Intent to Dismiss and Notice of Derogatory Information (NOID/ NDI) to the petitioner and counsel on December 3, 2012, informing them that a review of public records accessed through Westlaw's corporations database reflected that the petitioner's status was automatically terminated on May 31, 2007. The AAO noted that the record contained a copy of the petitioner's 2006 Form 1120S, U.S. Income Tax Return for an S Corporation, that had been filed on March 13, 2007. The AAO also noted that this Form 1120S tax return indicates that this is the petitioner's final tax return. The AAO informed the petitioner that if it was no longer an active business, the petition and its appeal to this office have become moot.¹ In which case, the appeal shall be dismissed as moot. Therefore, the AAO requested that the petitioner provide a current certificate of good standing or other evidence demonstrating that the petitioning business is not inactive and had current business activity.

The petitioner and counsel were given 30 days to respond to the NOID/NDI. The AAO specifically alerted the petitioner that failure to respond to the NOID/NDI would result in dismissal since the AAO could not substantively adjudicate the motion without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

¹ 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.

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More than 30 days have passed since the NOID/NDI was issued, and the AAO has received no response from either counsel or the petitioner. Therefore, the motion will be dismissed on this basis, as well as those issues specifically raised by the AAO in the NOID/NDI.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.