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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

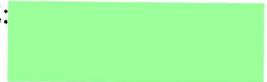


U.S. Citizenship
and Immigration
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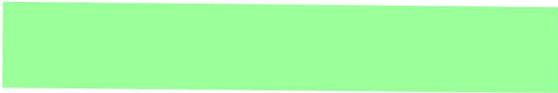


DATE: JUL 22 2013

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based petition was dismissed by the Director, Nebraska Service Center (director). The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reconsider the decision. The AAO will grant the motion but affirm the AAO's dismissal of the appeal. The petition will remain denied.

The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision.

The petitioner had sought to permanently employ the beneficiary in the United States as an administrative assistant, seeking visa classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director denied the petition on September 2, 2010, concluding that the petitioner had failed to establish that the beneficiary's required employment experience for the offered position.

The petitioner appealed the director's decision. On July 30, 2012, the AAO issued a Notice of Intent to Dismiss and Derogatory Information (NOID/NDI) to the petitioner, "Abundant World Mission Center." It informed the petitioner that according to the State of California online corporation records, the petitioner's status was "suspended," and provided a copy of the status report to the petitioner. The AAO informed the petitioner that if it was no longer in business, then no *bona fide* job offer exists, and the petition and appeal were moot. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of the petitioner's business. See 8 C.F.R. § 205.1(a)(iii)(D). Moreover, any concealment of the true status of 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). The petitioner was requested to resolve any inconsistencies in the record with independent, objective evidence. *Id.* The petitioner was also requested to demonstrate its continued existence, operation, and good standing. Finally, the AAO requested clarification and specific documentation from the petitioner relevant to its *bona fides*, its ability to pay the proffered wage, and the beneficiary's qualifications.

In response, the petitioner, through counsel, asserts that the petitioner was now known as [REDACTED]. The petitioner submitted various documents describing the existence of the claimed successor "[REDACTED]" including an affidavit, dated August 28, 2012, from [REDACTED] which stated that the petitioner could not financially manage [REDACTED] alone and therefore it was brought within [REDACTED] as its missionary arm. Rev. Park stated, "[as] the successor to the former petitioner, [REDACTED] with solid financial footing, [REDACTED] will continue to offer the position of 'Administrative Assistant to the beneficiary. . .'"

Upon review of the petitioner's response to the AAO's NOID/NDI and the underlying record, the AAO dismissed the appeal on December 27, 2012. The AAO determined that the petitioner had not

established that a successor-in-interest had been established. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1981). The AAO noted:

This evidence submitted in response to the AAO's NOID/NDI does not establish the date or document that any transfer of ownership between the entities such as a contract of sale, mortgage closing, or merger agreement ever occurred. No audited financial statements of both entities for the year in which the transfer occurred or copies of financial instruments used to execute any transfer have been submitted. No evidence has been provided that the successor-in-interest acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The evidence does not establish that the manner in which the business is controlled by the successor is substantially the same as it was before any transfer. Therefore, the evidence in the record is not sufficient to establish that Abundant Mission Church is the successor-in-interest to Abundant Mission Center.

On motion, in relation to the existence of a successor-in-interest relationship, counsel submits copies of documentation already previously submitted and additionally submits a copy of a document titled "MINUTES OF MEETING OF THE BOARD OF DIRECTORS OF [REDACTED]". The document purports to describe a meeting of a quorum of directors held on July 10, 2012, which are shown by "the attached roster." The minutes state that the [REDACTED] made a motion, which was passed, to acquire [REDACTED]. Then the meeting was adjourned. This document is signed by the president and secretary. No roster is attached and no other evidence has been submitted to establish the actual acquisition of the petitioner by the claimed successor. Further no explanation has been offered to clarify why this document was not submitted with the response to the AAO's NOID/NDI, while a later declaration from [REDACTED] dated August 28, 2012 had been submitted. The petitioner has not established that a valid successor-in-interest relationship has occurred. Additionally, even if this document were accepted as a valid transfer and not merely a partial document describing a motion to make an acquisition, the continuing ability to pay the proffered wage has not been established by the claimed successor.

The AAO's prior decision dismissing the appeal itemizes the requests for specific documentation that had been previously requested in the AAO's NOID/NDI issued on July 30, 2012, as well as the petitioner's failure to respond to those requests relevant to the ability to pay, as well as other issues. As noted therein, the petitioner failed to submit the requested financial evidence for 2009, 2010, 2011 and continuing until the present. Further, the inconsistencies and discrepancies contained within the financial statements submitted were set forth in the AAO's dismissal of the appeal and have not been addressed or resolved on motion. Additionally, the claimed successor must establish eligibility for the immigrant visa in all respects including the predecessor's ability to pay the proffered wage from the priority date until the date of transfer of ownership, as well as its own ability to pay the proffered wage from the date of transfer onward. As discussed in the AAO's dismissal of the appeal, the unaudited financial statements submitted by the claimed successor cannot be considered as probative of its ability to pay the proffered wage. *See* 8 C.F.R. §204.5(g)(2). This deficiency has not been addressed by the petitioner on motion. Further, it is incumbent on 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 Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Rather, on motion, counsel asserts that the petitioner owns its own building and collects rent from other tenants in the building and has a strong membership base.

This argument does not establish the continuing ability to pay the proffered wage. The AAO emphasizes that a religious or non-profit entity is not exempt from the obligation to establish its continuing ability to pay the proffered wage. As set forth above and in the AAO's prior decision dismissing the appeal, the petitioner has not submitted the prescribed evidence for the relevant period of time, and has failed to resolve the discrepancies of the financial statements that were submitted to the record. Additionally, the claimed successor-in-interest has not been established or demonstrated eligibility based on its own ability to pay the proffered wage from the claimed date of transfer onward or by the predecessor from the priority date until the claimed date of transfer.

On motion, the petitioner submits another copy of an employment verification letter from [REDACTED] claiming that the beneficiary worked there from January 1, 1992 to December 31, 1994. This letter was already submitted to the underlying record. It claimed that the beneficiary worked as an administrative assistant but failed to describe his duties. As noted in the AAO's previous decision, this employment was omitted from the ETA Form 9089, signed under penalty of perjury by the petitioner and the beneficiary and will not be considered as probative of the beneficiary's qualifying experience. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

Relevant to the beneficiary's education, on motion, the petitioner submits a copy of a certificate of licensure qualification from the record center of a U.S. institution identified as the [REDACTED] "the only educational institution listed by the beneficiary on the ETA Form 9089. A copy of a transcript of record from a Korean seminary not listed on the ETA Form 9089, has also been submitted. The AAO specifically requested documentation from the petitioner regarding the [REDACTED] in Item 10 of the NOID/NDI issued on July 30, 2012 consisting of a certified, official transcript and diploma of the claimed degree, as well as evidence of accreditation by the U.S. Department of Education. Neither has been received in response to the NOID/NDI or with the petitioner's motion. Further, the AAO also noted in Item 11 of the NOID/NDI, that as the education claimed was not listed on the ETA Form 9089, proof, including any diploma or transcript should be directly submitted from that institution to the AAO. No such submission has been received. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Based on the foregoing, the AAO reaffirms its previous dismissal of the appeal on December 27, 2012.

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NON-PRECEDENT DECISION

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

ORDER: The motion to reconsider is granted. The prior decision AAO dated December 27, 2012, is affirmed. The petition remains denied.