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

(b)(6)

[redacted]

Date: JUN 2 5 2013 Office: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 March 12, 2010 the Administrative Appeals Office (AAO) dismissed the appeal and upheld the decision of the Director, Nebraska Service Center (the director). The petitioner has now filed a motion to reopen and a motion to reconsider the AAO's decision. The motions will be granted, and the appeal will be reopened and reconsidered. Upon reconsideration, the appeal will be dismissed as moot, and the AAO's previous decision will remain undisturbed.

The petitioner describes itself as a financial services company. It seeks to employ the beneficiary permanently in the United States as a systems analyst pursuant to sections 203(b)(3)(A)(i) and (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1153(b)(3)(A)(i) and (ii).[1] As required by statute, a labor certification approved by the U.S. Department of Labor accompanied the petition. The director denied the petition, and the AAO dismissed the appeal, finding that the petitioner failed to demonstrate that the beneficiary had the minimum educational and experience requirements for the proffered job.[2] Beyond the decision of the director, the AAO also found that the petitioner failed to establish the continuing ability to pay the proffered wage from the priority date.

On motions to reopen/reconsider, counsel for the petitioner maintains that the beneficiary's bachelor's degree in aviation maintenance management satisfies the educational requirements as specified on the labor certification. As evidence, counsel submits a letter dated April 7, 2010 from who testifies that the bachelor's degree in the aviation maintenance management granted to the beneficiary is equivalent to a bachelor's degree in computer science. On motions, counsel also states that the petitioner has the continuing ability to pay the proffered wage from the priority date.

The record shows that the motions are properly filed, timely and supported by new evidence. The AAO conducts this 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 in this proceeding.[3]

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[1] 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] The proffered job requires the applicants, including the beneficiary, to have at least a bachelor's degree in computer science, physics, engineering, or related field.

[3] 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).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the motions state new facts and are supported by corroborating documentary evidence. They also state the reasons for reconsideration. Therefore, the motions are granted, and the appeal will be reopened and reconsidered.

In adjudicating the appeal, evidence has come to light that the petitioning corporation in this matter, ., has been dissolved. On April 23, 2013 the AAO sent a Notice of Intent to Dismiss and Derogatory Information along with the evidence of the company's dissolution and indicated that if the petitioner is no longer an active business, the petition and its appeal to this office have become moot,[4] in which case the appeal shall be dismissed as moot. The petitioner was given 30 days to provide evidence showing that the business remains active and viable during the pendency of the petition and appeal.

More than the allotted 30 days have passed, and no response has been received. As it appears that the petitioning business has been dissolved, the appeal will be dismissed as moot.[5] 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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[4] 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.

[5] Additionally, as noted in the NOID/NDI, 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.