

(b)(6)

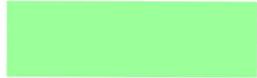
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

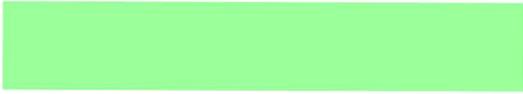


U.S. Citizenship
and Immigration
Services



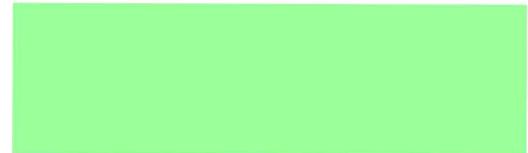
DATE: **MAR 27 2013**

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a horizontal line extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, Vermont Service Center, on April 29, 2002, but the approval was revoked by the Director, Texas Service Center (the director), on March 27, 2009. The petitioner has appealed the decision to revoke the approval of the petition to the Administrative Appeals Office (AAO). The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) (stating that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed).

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook 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).¹ As required by statute, a labor certification (Form ETA 750 Application for Alien Employment Certification) approved by the U.S. Department of Labor (DOL) accompanied the petition. The director revoked the approval of the visa petition, finding that the petitioner failed to establish that it conducted good faith recruitment in accordance with the DOL recruitment procedures. The director also determined that evidence of record failed to demonstrate that the beneficiary had the requisite work experience in the job offered prior to the priority date.

On January 14, 2013, the AAO issued a Notice of Intent to Dismiss and Notice of Derogatory Information (NOID/NDI) noting that the petitioner () had been dissolved and was no longer an active business as of September 10, 2010. The AAO further stated:

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.

Additionally, a review of the record does not show that the party appealing the director's decision, which in in this case is " " is the affected party. The record contains no evidence establishing that " " is the successor-in-interest to " " the petitioner.

In the AAO's NOID/NDI, the AAO specified three requirements that " " must meet to establish that it is a petitioning successor. Specifically, the AAO stated:

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.

In order to establish a valid successor relationship for immigration purposes, your organization [REDACTED] must satisfy three conditions. First, the job opportunity offered by your organization must be the same as originally offered on the labor certification by the petitioner. Second, both the acquired and the acquiring company, or the merged company, must establish eligibility in all respects by a preponderance of the evidence. The petitioner is required to submit evidence of the ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2) beginning on the priority date until the date the transfer of ownership to the successor company is completed. The claimed successor – your organization – must also demonstrate its continuing ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2) from the transaction date forward. Third, your organization must fully describe and document the transfer and assumption of the ownership of all, or the relevant part of, the original petitioning company.

Evidence of transfer of ownership must show that your organization not only purchased assets from the petitioner, but also the essential rights and obligations of the petitioner necessary to carry on the business in the same manner as the petitioner. Your organization must continue to operate the same type of business as the petitioner and the essential business functions must remain substantially the same as before the ownership transfer. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

The AAO advised [REDACTED] to submit documentary proof showing that it is the affected party (i.e. the successor-in-interest to the petitioner). The AAO in the NOID/NDI specifically noted that the AAO would reject the appeal should [REDACTED] fail to submit additional evidence. The AAO gave the petitioner 30 days to respond. Thirty days have passed, and the petitioner has not submitted any evidence or responded to the AAO's NOID/NDI. Therefore, we determine that [REDACTED] and the petitioner are two distinct and separate entities, and that the appeal was not filed by an affected party. The appeal must, for the reasons stated above, be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Moreover, since the appeal is rejected, the AAO will not discuss other issues such as: whether or not the director's decision to revoke the approval of the petition was based on good and sufficient cause, as prescribed by section 205 of the Act; 8 U.S.C. § 1155; whether or not the beneficiary qualifies for the position; and whether the petitioner has the continuing ability to pay.

The AAO notes that it appears as if the petitioner's business is dissolved. As discussed above, in our January 2013 NOID/NDI, we advised the petitioner that according to the Georgia Secretary of State website (<http://soskb.sos.state.ga.us/corp/soskb/csearch.asp>), the petitioner was dissolved on September 10, 2010. We indicated that if the petitioner is no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore 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 business. *See* 8 C.F.R. § 205.1(a)(iii)(D). The petitioner did not respond or submit any evidence to rebut the derogatory information with regards to whether it continued to operate and/or that a *bona fide* job offer exists. For this additional reason, the approval of the petition may not be reinstated.

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 rejected.