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)

DATE: MAY 16 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:

SELF-REPRESENTED

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: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a hotel casino. It seeks to permanently employ the beneficiary in the United States as a gaming supervisor. The petitioner requests classification of the beneficiary as a professional or 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). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concluded that the petitioner did not establish it has the ability to pay the proffered wage.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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.[1]

On January 24, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss the appeal (NOID) with a copy to counsel of record. The NOID informed the petitioner that under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987).

The petitioner claims it is a hotel casino business, and seeks to employ the beneficiary as a gaming supervisor. During the adjudication of the appeal information has come to light that cast doubts upon the petitioner's claims. The petitioner claims on the petition to operate the hotel casino business with a total of two employees and a Federal Employer Identification Number (FEIN) of [redacted] According to the database maintained by Westlaw there is no organization with the petitioner's name or FEIN.[2] Furthermore, the State of New Jersey requires that all gaming establishments and their employees hold appropriate licenses. The AAO researched the organizations licensed by the State of New Jersey Division of Gaming Enforcement (DGE) and discovered that the petitioner does not have a license to operate a gaming establishment. *See*

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 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).

[2] The petitioner failed to provide a Schedule C or other evidence to verify its FEIN.

http://www.nj.gov/oag/ge/emppublicinfolist.html (accessed November 1, 2012). Furthermore, a review of the DGE's records show that Mr. who signed the petition and application for labor certification on behalf of the petitioner, held a license to work in a casino from 1995 to 1996, but the license has not been active since that time. Thus, at the time of the petition and application for labor certification the petitioner has not established that it was an operational hotel and casino, and therefore failed to establish that the petition was supported by a bona fide job offer.

Furthermore, a search of Google Maps' street view shows that the petitioner's address is a residence. The building at this same address was claimed by the petitioner's owner, as a rental property on the copies of his IRS Forms 1040 included in the record.

As noted above, the petitioner claims to employ two persons. The job duties as stated on the ETA Form 9089 state:

> Supervise gaming operation and personnel in an assigned area. Circulate among tables and observe operation. Ensure that stations and games are covered for each shift. Explain and interpret operating rules of house to patrons, plan and organize activities and create friendly atmosphere for guests. Adjust service complaints.

The petitioner has not established that the proffered job is realistic in light of the small number of employees.

The AAO requested the petitioner to provide evidence which establishes that it has the required licenses to conduct a gaming business in the State of New Jersey, and has had such a license from the priority date. The AAO also directed the petitioner to provide copies of all documents and annual filings provided to DGE from the priority date onward.

The AAO also informed the petitioner that it failed to established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm'r 1986). *See also, Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981). The application for labor certification requires twenty-four months experience in the proffered job as a gaming supervisor. Nothing in the record substantiates that the beneficiary possesses this experience.

The AAO also told the petitioner that it has the burden of showing it possesses continued ability to pay the proffered wage. The record contains the petitioner's owner's IRS Form 1040 for 2008 and

part of the petitioner's owner's 2007 tax return. The petitioner was directed to provide full copies of its tax returns for all years from 2007 through 2011, including Schedule C. The AAO also requested evidence that the petitioner paid and employed the beneficiary or any other worker and requested copies of Forms 1099 or W-2 substantiating such payments for 2007 to 2012.

The petitioner failed to respond to the the NOID. However, on January 29, 2013, then counsel of record withdrew from the case stating: "we can no longer in good conscience, represent the captioned individuals…"

The AAO finds that the petition contains willful misrepresentations of material facts. A willful misrepresentation of a material fact occurs is one which "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- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). Here, we find that the petitioner has never been an operational hotel casino, and has never had a legitimate offer of employment for a casino manager.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), regarding misrepresentation states: "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible."

The regulation at 20 C.F.R. § 656.30(d) provides:

> (d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

Consequently, the AAO is invalidating the labor certification.

As of the date of this decision, the petitioner has not responded to the AAO's NOID. 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). Since the petitioner failed to respond to the NOID, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

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 summarily dismissed with a finding of fraud.

FURTHER ORDER: The AAO finds that the petitioner fraudulently misled DOL and USCIS on elements material to its eligibility for a benefit sought under the immigration laws of the United States. The labor certification application ( ) is invalidated pursuant to 20 C.F.R. § 656.30(d) based on the petitioner's fraudulent misrepresentation.