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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 0 9 2013 OFFICE: NEBRASKA SERVICE CENTER FILE [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3)(A)(i) or (ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3(A)(i) or (ii)

ON BEHALF OF PETITIONER:

[redacted]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a construction business. It seeks to permanently employ the beneficiary in the United States as a stone mason. 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 concludes that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

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 June 20, 2013, the AAO issued a Notice of Intent to Dismiss and Derogatory Information, in which it is stated:

> According to the New York State Department of State, your organization was dissolved by proclamation on January 25, 2012. A copy of the status report for your organization is attached.
>
> If your organization 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 your organization's business. *See* 8 C.F.R. § 205.1(a)(iii)(D).
>
> Moreover, any concealment of the true status of your organization seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). You must resolve any inconsistencies in the record with independent, objective evidence. *Id.*

[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).

Because it appears that the instant appeal is moot, the AAO has not examined the merits of your appeal. If you intend to continue your appeal, you must demonstrate the continued existence, operation, and good standing of your organization.

Form ETA 750 lists the petitioner as Form I-140 lists the petitioner as The federal employer identification number on the Form I-140 is New York State Department of State (NYSDOS) records reflect that the petitioning entity, is inactive and dissolved based on "Dissolution by Proclamation/Annulment of Authority (Jan 25, 2012)."

The petitioner responded with a letter dated July 10, 2013 from its accountant, states that he is the accountant for and . He lists their different federal tax identification numbers and states that they have the same owner, , and he is the sole shareholder for both companies. The response includes a copy of NYSDOS records for . which reflect that it is in active status; a NYSDOS filing receipt for dated May 11, 1987; a Certificate of Incorporation for dated May 6, 1987; a Statement of Incorporation in Lieu of Organizational Meeting for . dated May 11, 1987; a Certificate of Incorporation for dated January 3, 1995; and a logo print out for As the companies have two separate tax identification numbers, they are separate entities. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

In addition, the record does not reflect that is a successor-in-interest to the entity that filed the labor certification, petition and appeal in the instant matter, which would permit processing under the same labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). As is a different entity than the petitioner/labor certification employer and appellant, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

A valid successor relationship may be established for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor, it does not demonstrate that the job opportunity will be the same as originally offered, and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods.

The petitioner has not established, in its response, the continued existence, operation, and good standing of [redacted]. There is no evidence of this in the record or that [redacted] is a successor-in-interest to [redacted]. The instant appeal is therefore moot.[2]

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed as moot.

[2] Additionally, as the appeal is dismissed as moot, the AAO has not fully examined the issue of whether the petitioner can overcome the basis of the director's decision and whether the petitioner can establish its ability to pay the proffered wage.