(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: SEP 2 6 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 (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, Texas 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 Japanese restaurant. It seeks to permanently employ the beneficiary in the United States as a Sushi Chef. 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 has not established the continuing ability to pay the proffered wage.

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]

The U.S. Department of Labor (DOL), Employment and Training Administration, issued a Notice of Revocation regarding the certified ETA Form 9089, Application for Permanent Employment Certification (case number filed on behalf of the beneficiary. In the DOL's Notice, the agency indicated that it was revoking the certified ETA Form 9089 under 20 C.F.R. § 656.32, as the certification was not justified. Specifically, DOL indicated that the petitioner failed to disclose a close familial relationship between one or more of the petitioner's owners and the beneficiary. 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). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart* 374, 00-INA-93 (BALCA May 15, 2000).

An alien seeking to be classified as an employment-based third preference immigrant under section 203(b)(3) of the Act is inadmissible unless the Secretary of Labor has determined and certified that there are not sufficient workers who are able, willing, qualified and available for the employer's job opportunity, and that the alien's admission to the United States will not

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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).

adversely affect the wages and working conditions of U.S. workers similarly situated. *See* sections 212(a)(5)(A)(i)(I) and (II) of the Act. Accordingly, every petition filed to classify an alien beneficiary as an employment-based immigrant under section 203(b)(3)(A) of the Act must be accompanied by an individual labor certification issued by DOL. *See* 8 C.F.R. § 204.5(l)(3)(i). Without an appropriate certification from DOL, the AAO is without statutory authority to adjudicate or grant a petitioner's employment-based third preference immigrant petition.

The instant petition is not supported by a valid labor certification. Therefore, the appeal is moot.

On July 30, 2013, the AAO issued a Notice of Intent to Dismiss informing the petitioner that the U.S. Department of Labor had revoked certification of the labor certification (ETA Form 9089). The petitioner was permitted thirty (30) days to respond to the AAO's Notice. The AAO has received no response. The instant appeal is therefore moot.

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.