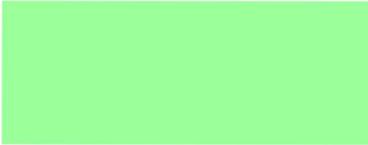


(b)(6)

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



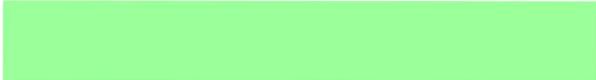
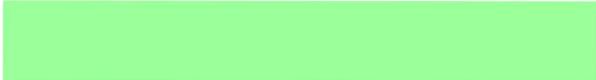
U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 13 2015**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed as moot.

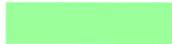
On June 18, 2008, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, seeking to employ the beneficiary as a nursery manager and to classify him as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(ii). The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the Department of labor (DOL) on December 30, 2005, and certified by the DOL (labor certification) on December 21, 2007.

On January 27, 2010 the Director denied the petition on the ground that the petitioner failed to establish that the proffered position was a *bona fide* job opportunity open to U.S. citizens. The Director found that the evidence of record, though inconsistent, indicated that the beneficiary held a series of high-level positions in the petitioning company over the years – including secretary, chief financial officer, director, and chief executive officer. Due to the beneficiary’s prominent position(s) in the company, and the imputed potential of the beneficiary to influence the hiring process, the Director concluded that “the validity and good-faith of the job offer noted on the labor certification cannot be established.” Accordingly, the petition was denied.

On March 1, 2010, the petitioner filed an appeal, Form I-290B, which was supplemented by a brief from counsel and supporting documentation.

On September 18, 2014, the DOL, pursuant to its authority under 20 C.F.R. § 656.32, issued a *Notice of Intent to Revoke* (NOIR) the labor certification, [REDACTED] which was mailed to the petitioner with a copy to counsel. The NOIR advised the petitioner that the certification of the ETA Form 9089 did not appear to be justified because the beneficiary was the incorporator and an officer of the company. This fact, in addition to the small size of the petitioning company, created a rebuttable presumption that the beneficiary had influence and control over the job opportunity and that the nursery manager position was not a *bona fide* job offer open to U.S. workers. Since the beneficiary’s corporate positions were not known to the DOL during the labor certification process, the NOIR stated that the DOL “was unable to assess the impact of the [beneficiary’s] corporate interest” on the *bona fides* of the job opportunity. The NOIR gave the petitioner 30 days to submit rebuttal evidence and advised that, in accordance with the regulation at 20 C.F.R. § 656.32(b)(2), if no such evidence was filed during that time period the NOIR would become the DOL’s final decision. The record indicates that the petitioner has not responded to the NOIR. Accordingly, the NOIR has become the DOL’s final decision, and the labor certification approval in December 2007, [REDACTED] has been revoked.

The Form I-140 petition that was filed on behalf of the instant beneficiary must be supported by an individual labor certification that was properly certified by the DOL. *See* 8 C.F.R. § 204.5(a)(2). If the petition is not supported by a properly certified ETA Form 9089, the petition cannot be approved and any other issues raised in the appeal proceedings have become moot.



On December 23, 2014, we issued a Notice of Intent to Dismiss (NOID) the appeal based on the DOL's revocation of the labor certification. The NOID granted the petitioner 30 days in which to file a rebuttal or response, and advised the petitioner that, according to 8 C.F.R. § 103.2(b)(13)(i), the failure to respond to a request for evidence or to a notice of intent to deny by the required date may result in the petition being summarily denied as abandoned, denied based on the record, or denied for both reasons. The petitioner did not respond to the NOID within the 30-day period specified in the NOID, or at any time up to the date of this decision.

Because the labor certification accompanying the petition has been revoked, the petition is not supported by a valid labor certification as required by 8 C.F.R. § 204.5(a)(2). Accordingly, the petition is not approvable and the issues raised in the instant appeal are moot.

**ORDER:** The appeal is dismissed as moot.