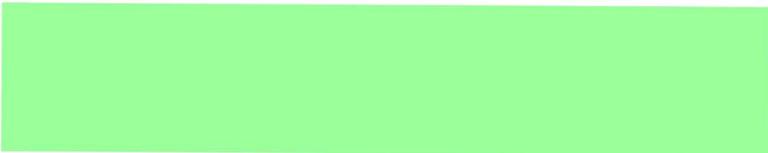


(b)(6)

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: **JAN 08 2015**

OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:   
Beneficiary:

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

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, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed as moot.

On October 8, 2010, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, seeking to employ the beneficiary as a human resources officer 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 March 16, 2010, and certified by the DOL (labor certification) on July 12, 2010.

On November 5, 2012 the Director denied the petition on the ground that the petitioner failed to establish the proffered position is a *bona fide* job opportunity open to U.S. citizens. The Director found that the petitioner concealed the familial relationship between its owner and the beneficiary (they are brothers) during the labor certification process by falsely answering “No” to the question at C.9. of the ETA Form 9089 as to whether “there is a familial relationship between the owners, stockholders, partners, corporate officers, incorporators and the alien?” The Director denied the petition with a finding of fraud on the ground that the petitioner submitted falsified documents to obtain an immigration benefit. The Director also found that the beneficiary willfully misrepresented a material fact by endorsing the Form ETA 9089, and extended the fraud finding to the beneficiary.

On September 2, 2011, the petitioner filed an appeal on Form I-290B. On May 24, 2013, we issued a Notice of Intent to Dismiss and Request for Evidence, to which the petitioner responded on June 21, 2013 with a letter from counsel and additional documentation.

On November 7, 2014, the DOL, pursuant to its authority under 20 C.F.R. § 656.32, issued a Revocation Notice which revoked its prior certification of the ETA Form 9089 on behalf of the instant beneficiary. The regulation at 8 C.F.R. § 204.5(a)(2) specifies that the Form I-140 petition filed on behalf of the beneficiary must be supported by an individual labor certification from the DOL. If the petition is no longer supported by a certified ETA Form 9089, the petition cannot be approved and the issues raised on appeal to this office become moot.

On November 20, 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)(130(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.

(b)(6)

*NON-PRECEDENT DECISION*

Page 3

**ORDER:** The appeal is dismissed as moot since the petition is no longer supported by a valid labor certification.