

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: **APR 01 2013** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 nonimmigrant visa petition was denied by the service center director, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The petitioner claims to be a telemarketing company with 145 employees and a net annual income of approximately \$150,000, and it seeks to employ the beneficiary as a telecommunications specialist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the proffered position was not a specialty occupation. On appeal, a third-party corporation contends that the director's findings were erroneous and submits a brief in support of this contention.

During the adjudication of the appeal, evidence came to light that the petitioner in this matter had been dissolved. Specifically, the petition in this matter was filed by [REDACTED]

[REDACTED] with an address of [REDACTED] San Diego, California,

[REDACTED] A review of California state corporate records, however, revealed that this corporation, originally established in 2001, was now dissolved. The appeal in this matter was filed by [REDACTED]

[REDACTED] with an address of [REDACTED] Pueblo,

Colorado, [REDACTED] According to Colorado state corporate records, this entity was incorporated in the State of Colorado on September 28, 2011, nearly ten months after the filing of the instant petition. Colorado state corporate records indicate that this Colorado corporation is currently in existence and in good standing.

Therefore, on September 7, 2010, this office sent the petitioner a request for evidence (RFE) providing an opportunity to rebut or explain this derogatory information. Specifically, the AAO requested evidence demonstrating that the petitioner was still in existence, either in an identical corporate form or in some other form by way of merger, acquisition, division, or change of name or form.

The petitioner, hereinafter referred to as the California corporation, according to the statements set forth in response to the RFE, ceased operations in 2011. The record does not establish that it ceased to exist because of a merger, acquisition, division, or change in corporate form or name, which resulted in the California Corporation becoming a part of the Colorado corporation, a new entity. To the contrary, it appears that the Colorado corporation, based on the statements set forth in the response to the RFE, was formed as a new business entity. Specifically, the Colorado corporation stated that after the instant petition was filed, the decision was made to "close" the California corporation "instead of merging it into [the] Colorado entity." Therefore, the Colorado corporation acknowledges that it is not a successor-in-interest to the petitioner in this matter, and no documentary evidence to suggest otherwise has been submitted. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Despite the Colorado corporation's assertion that it has not changed ownership, assets, or employees, a corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980).

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(1). As the Colorado corporation is not a recognized party, it is not authorized to file an appeal. *Id.*; 8 C.F.R. § 103.3(a)(1)(iii)(B).

Pursuant to 8 C.F.R. § 214.2(h)(11)(ii), even if the appeal were not being rejected and eligibility were otherwise established in this matter, any approval would immediately and automatically be revoked upon its issuance as the petitioner has gone out of business. Therefore, since the original petitioning employer in this matter, the California corporation, has been dissolved, the appeal would have to be dismissed for this reason alone, rendering any remaining issues in this matter moot. If the Colorado corporation still seeks to employ the beneficiary in the United States, it will need to file its own petition on his behalf. In such a case, the denial of the California corporation's petition and rejection of the instant appeal shall not prejudice the filing and adjudication of this new petition for H-1B employment filed by the Colorado corporation.

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 sustained that burden.

ORDER: The appeal is rejected.