



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 02 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner: [Redacted]

Beneficiary: [Redacted]

ON BEHALF OF PETITIONER:

[Redacted]

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,

for *Michael T. Keay*
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed as moot.

In the Form I-129 visa petition and supporting documents, the petitioner describes itself as an IT business established in 1998. The petitioner stated that it has 15 employees. In order to employ the beneficiary in what it designates as a computer programmer, the petitioner seeks to classify him 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 on the ground that the petitioner failed to establish that it meets the applicable statutory and regulatory provisions to determine that it is qualified to file an H-1B petition, that is, as a United States employer. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

During the adjudication of the appeal, however, the AAO discovered evidence that the petitioning business in this matter, [REDACTED] is not in good standing. Specifically, a "Search Incorporations, Cooperatives, Banks and Insurance Companies" search on the Internet site of the Arkansas Secretary of State revealed that the status of the petitioning Arkansas domestic business corporation is "Not Current," and, further, indicated that the "Not Current" status is based upon a failure to pay the annual Franchise Tax that "[c]ompanies must pay . . . to conduct business in Arkansas." On October 17, 2012, the AAO sent a Notice of Derogatory Information (NDI) to the petitioner informing it of this derogatory information and offering it the opportunity to submit rebuttal evidence.

The October 17, 2012 NDI notified the petitioner that its corporate status was material to its eligibility for the requested visa, and the NDI also informed the petitioner that the aforementioned derogatory information regarding its status raises serious questions about whether it continues to exist as an importing employer, whether the petitioner qualifies as a United States employer as defined, and whether it is authorized to conduct business. The NDI also informed the petitioner that it was incumbent upon it to submit independent objective evidence to resolve the issues specified in the NDI as arising from the derogatory corporate-status information.

The NDI afforded the petitioner 30 days to respond. Further, the NDI alerted the petitioner that "failure to timely respond to [the NDI] will result in the dismissal of the instant appeal as moot."

To date, the AAO has not received any response to the NDI.

As the petitioner has not responded to the NDI and therefore opted to not address and resolve the material issues specified therein, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed. The petition is denied.