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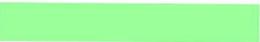
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

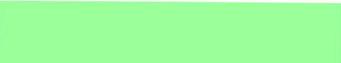


U.S. Citizenship  
and Immigration  
Services



DATE: **OCT 30 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a light green rectangular redacted area.

Ron Rosenberg  
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.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on December 12, 2012. In the Form I-129 visa petition, the petitioner describes himself as a bearing manufacturer established in 2005. In order to employ the beneficiary in what it designates as a cost analyst position, 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 February 1, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that all evidentiary requirements were satisfied.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; (5) the Form I-290B and supporting documentation; and (6) the AAO's RFE. The AAO reviewed the record in its entirety before issuing its decision.<sup>1</sup>

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the nature of the petitioning entity, the exact position offered, the location of employment, the proffered wage, et cetera. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A petitioner may of course change a material term and condition of employment. However, such a change cannot be made to a petition after it has already been filed with USCIS. Instead, the change must be documented through the filing of an amended or new petition, with fee, for USCIS to consider. See 8 C.F.R. § 214.2(h)(2)(i)(E).

The petitioner states that it is a domestic for-profit organization established under the laws of the State of Wisconsin in 2005. During a preliminary review of the record, the AAO was unable to determine that the petitioner is an organization in good standing. The AAO issued a Notice of Derogatory Information on August 15, 2013 to provide the petitioner with an opportunity to submit additional evidence. Specifically, the AAO advised the petitioner that the Wisconsin Department of

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Financial Institutions listed the petitioner as "Delinquent" as of July 1, 2012. A printout the website was also provided. In the RFE, the AAO issued the following request for additional documentation:

The AAO hereby requests the petitioner to provide evidence demonstrating the petitioning organization's status. Please send evidence that, **when the visa petition was filed**, the petitioner was an organization in good standing, as well as evidence that it has **remained so during the interim** and that it is **now an organization in good standing**. If there is an error on the State of Wisconsin, Wisconsin Department of Financial Institutions website, the petitioner should also submit probative evidence from the State of Wisconsin to establish that the website is incorrect, along with a detailed statement explaining why the website indicates the petitioner's status as "Delinquent" and that it appears that the corporation was administratively dissolved on July 8, 2013.

In addition, submit evidence (such as invoices, bank statements, federal tax returns, etc.) demonstrating that the petitioner has done business since December 13, 2012 and continues to do business in the United States. Furthermore, the petitioner may submit any other documentation that it wishes to provide to establish eligibility for the benefit sought. See Section 291 of the Act, 8 U.S.C. § 1361.<sup>2</sup>

The regulations at 8 C.F.R. § 103.2(b)(8) and (16)(i) do not state a specific period of time that must be afforded to a petitioner to respond to a request for additional or missing evidence or to a notice of derogatory information. The AAO considers thirty (30) days to be ample time for this purpose. Therefore, the petitioner was afforded 30 days, plus three days for service by mail, from the date of the letter in which to respond to this notice.

The petitioner did not respond within the 33 day period allowed in the request, or any time since then. If a petitioner fails to respond to a request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. See 8 C.F.R. § 103.2(b)(13)(i). As further provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

The issue of whether the petitioner is a business in good standing is material to the petitioner's eligibility for the requested benefit. See section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1); see also 8 C.F.R. §§ 214.2(h)(2)(i)(A), (4)(ii), (11)(ii). The regulation at 8 C.F.R. § 214.2(h)(11)(ii) addresses the grounds for automatic revocation of the approval of a petition and states, in pertinent part, that the "approval of any petition is immediately and automatically revoked if the petitioner goes out of business." It logically flows that a petitioner must be doing and continue to do business for the

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<sup>2</sup> The AAO notes that there is no requirement for USCIS to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. The regulation at 8 C.F.R. § 103.2(b)(8) states that a petition shall be denied "[i]f there is evidence of ineligibility in the record."

director to grant the petition. If the petitioner were not in business and the director granted the petition, it would result in the absurd result of the approved petition immediately and automatically being revoked the instant it was approved. See 8 C.F.R. § 214.2(h)(11)(ii). Moreover, any concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record. See *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

The AAO notes that the petitioner was provided with an opportunity to present evidence to demonstrate that it is a business in good standing; however, the petitioner declined to respond. The AAO further notes that according to Wisconsin law, a business corporation that has been administratively dissolved is not authorized to do business, "except that which is appropriate to wind up and liquidate its business and affairs."<sup>3</sup> Notably, the Wisconsin Department of Financial Institutions website indicates that the petitioner" was administratively dissolved on July 8, 2013.<sup>4</sup>

The record does not contain evidence that the petitioner was active and in good standing at the time of filing the petition on December 13, 2012, and has remained in good standing since that date. As the petitioner has not established that it was in good standing (and "in business") on the date it filed the application, and has further not established that it has remained in good standing (and permitted to transact business in Wisconsin) since that date, a credible offer of employment between the petitioner and the beneficiary cannot be demonstrated.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D.

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<sup>3</sup> Specifically, section 180.1421(3) of the Wisconsin Statutes states that section 180.1405(1) applies to corporations that have been administratively dissolved. Section 180.1405(1) states:

**180.1405 Effect of dissolution.**

- (1) A dissolved corporation continues its corporate existence but may not carry on any business except that which is appropriate to wind up and liquidate its business and affairs including the following:
  - (a) Collecting its assets.
  - (b) Disposing of its properties that will not be distributed in kind to its shareholders.
  - (c) Discharging or making provision for discharging its liabilities.
  - (d) Distributing its remaining property among its shareholders according to their interests.
  - (e) Doing every other act necessary to wind up and liquidate its business and affairs.

<sup>4</sup> Wisconsin Corporate Records search is available on the Internet at <https://www.wdfr.org/apps/CorpSearch/Search.aspx?> (search for petitioner last conducted on October 3, 2013).

Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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.

Moreover, as the petitioner has not responded to the AAO's request for evidence, the petition is deniable under 8 C.F.R. § 103.2(b)(13)(i) and (14). Accordingly, the appeal will be dismissed, and the petition will be summarily denied as abandoned and denied due to the failure to submit requested evidence that precludes a material line of inquiry, making any remaining issues in this proceeding moot.

**ORDER:** The appeal is dismissed. The petition is summarily denied as abandoned and denied due to the failure to submit requested evidence that precludes a material line of inquiry.