



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S-, LLC

DATE: JUNE 6, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, which was engaged in the operation of a restaurant through its subsidiary ([REDACTED] LLC), seeks to permanently employ the Beneficiary as its managing director under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Nebraska Service Center revoked the approval of the petition, determining that the Petitioner did not establish that (1) it would employ the Beneficiary in a managerial or executive capacity; (2) the Beneficiary was employed abroad in a managerial or executive capacity; and (3) that the Petitioner was doing business as defined in the regulations.

While reviewing the record of proceeding and conducting verification of the information contained therein, we found that the restaurant ([REDACTED]) operated by the Petitioner and its subsidiary had permanently closed in September 2018, subsequent to the filing of the appeal. We sent the Petitioner a notice of intent to dismiss and request for evidence (NOID/RFE)¹ with a copy of the information we found and allowed it an opportunity to respond to this derogatory information under the terms set forth in the regulations at 8 C.F.R. § 103.2(b)(16).

We have not received a response to the NOID/RFE and note that only one copy of the notice was returned to our office as undeliverable. If a petitioner does not respond to a request for evidence or a notice of intent to deny by the required date, we may deny the petition as abandoned, deny based on the record, or deny for both reasons. 8 C.F.R. § 103.2(b)(13)(i). Our NOID/RFE specifically informed the Petitioner that “we may dismiss your case if we do not receive your response to this NOID/RFE **within 87 days of the date on the cover letter**. This time period includes three days added for service by mail.” (Emphasis in original). To date, more than 87 days have elapsed, and we have yet to receive a response from the Petitioner; therefore, we will dismiss the appeal.

¹ We mailed the notice to the Petitioner’s address of record at [REDACTED] Virginia, with a copy to the Petitioner’s current registered address as reported to the Virginia State Corporation Commission.

Moreover, because the Petitioner did not submit evidence to resolve the issues addressed in the NOID/RFE, the Petitioner did not establish that the Beneficiary is eligible for classification as a multinational manager or executive. The Beneficiary's proffered position was dependent upon the Petitioner's operation of the restaurant and described his duties within the context and structure of the existing restaurant. As we noted in our NOID/RFE, if the Petitioner is no longer operating the business on which the employment offer was based, it is unclear how it could continue to offer the Beneficiary permanent employment in the United States under the terms and conditions stated in the instant immigrant petition. Further, if the Petitioner is no longer doing business directly or through its subsidiary, then it cannot meet the eligibility requirements for this immigrant classification. Accordingly, the appeal appears to be moot and will be dismissed for this additional reason.

ORDER: The appeal is dismissed.

Cite as *Matter of S-, LLC*, ID# 2249566 (AAO June 6, 2019)