

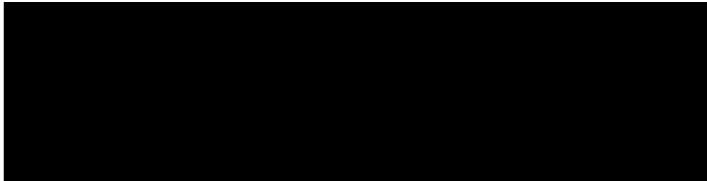
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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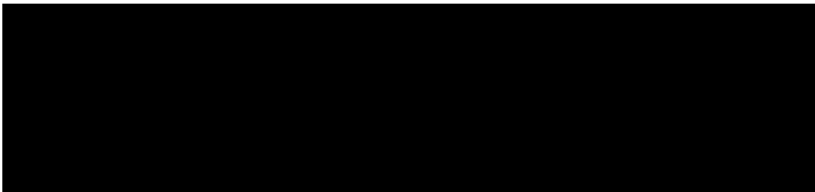
Date: **APR 27 2011** Office: TEXAS SERVICE CENTER FILE: SRC 07 209 50550

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as Any Other Worker, Unskilled (requiring less than two years of training or experience), pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



**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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

cc:

[REDACTED]

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and the petitioner subsequently appealed the director's decision to the Administrative Appeals Office (AAO). On March 2, 2011, the AAO provided the petitioner and the party filing the appeal with notice of adverse information in the record and afforded them both 30 days to provide evidence that might overcome the adverse information. No response has been sent or received thus far. The appeal will be dismissed.

The petitioner is a day care center for people with mental disabilities. It seeks to employ the beneficiary permanently as an unskilled worker in the United States pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(iii).<sup>1</sup> As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director denied the petition, finding that the petitioner did not have sufficient net income and net current assets to pay the beneficiary's proffered wage during the qualifying period – from the priority date until the beneficiary obtains lawful permanent residence.

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

On appeal, counsel for the petitioner indicated that her client (the petitioner) was no longer in business but that another organization – [REDACTED] – took over the petitioner's business in 2005.<sup>2</sup> On March 2, 2011, the AAO sent to the petitioner a notice of derogatory information (NDI) along with the print-outs from the official website of the California Secretary of State. The AAO advises the petitioner that if the petitioning business has been dissolved and is currently inactive, the petition and its appeal have become moot, in which case, the appeal shall be dismissed as moot,<sup>3</sup> unless the petitioner establishes by a preponderance of the evidence that the party filing the appeal ([REDACTED]) is the successor-in-interest to the petitioner.

The AAO afforded both the petitioner and the party filing the appeal 30 days in which to provide evidence that the records maintained by the California Secretary of State were not accurate or that the party filing the appeal is the successor-in-interest to the petitioner.

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<sup>1</sup> Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

<sup>2</sup> A search of the California Secretary of State's website confirms counsel's assertions that the named petitioner above has been administratively dissolved and is currently inactive.

<sup>3</sup> Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.

In the NDI, the AAO specifically alerted both the petitioner and the party filing the appeal that failure to respond to the NDI would result in dismissal without further discussion since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

More than 30 days have passed and the petitioner has not responded to the AAO's request. Therefore, the appeal will be dismissed without further discussion. 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 met that burden.

**ORDER:** The appeal is dismissed.