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Bureau of Citizenship and Immigration Services

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BS

OFFICE OF ADMINISTRATIVE APPEALS
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

JUL 24 2003

File: [REDACTED] SRC 01 098 53751 Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

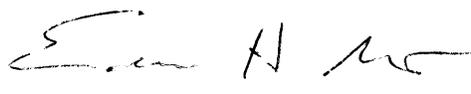
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a medical clinic seeking to employ the beneficiary as a family practitioner. As required by statute, the petition was accompanied by certification from the Department of Labor. The director concluded that the petitioner had not established that it is the successor-in-interest to the beneficiary's former employer.

On appeal, counsel asserts that the petitioner's evidence demonstrates a capability to pay the proffered wage. Counsel also contends that the beneficiary is employed in the same occupation as indicated in the approved labor certification.

The regulation at 20 C.F.R. § 656.30 provides that a labor certification involving a specific job offer is valid only for that job opportunity, the alien for whom the certification was approved, and for the area of intended employment. Labor certifications are valid indefinitely unless invalidated by the Bureau, a consular officer, or a court for fraud or willful misrepresentation of material fact involving the labor certification application. The Department of Labor and the former Immigration and Naturalization Service (INS) agreed that the INS would make a determination regarding whether the employer listed in the labor certification and the employer filing the employment-based immigration petition are the same entity or a successor-in-interest to the original entity.¹ If the employer/employee relationship changes, the validity of the approved labor certification may be affected; thus, if the employer filing the preference petition cannot be considered a successor-in-interest to the employer in the labor certification, the job opportunity as described in the approved certification no longer exists because the original employer no longer exists. *See, e.g., Matter of United Investment Group*, Int. Dec. 2990 (Comm. 1985).

On January 6, 1998, the beneficiary's former employer, the "Nature Coast Regional Health Network," filed an Application for Alien Employment Certification (Form ETA 750) with the Department of Labor. The labor certification was approved on August 12, 2000. The petitioner in this case, "Williston Family Practice, P.A.," filed an immigrant petition (I-140) on February 7, 2001. Documentation submitted with the petition included the beneficiary's educational and licensure credentials and a letter from [REDACTED] M.D., who signed as an "owner." Dr. [REDACTED] states that the Williston Family Practice, P.A. acquired the clinic in November 2000 and is a successor-in-interest to the Nature Coast Regional Health Network. She adds that except for a change in corporate ownership, the job opportunity remains the same.

On November 8, 2001, the director instructed the petitioner to submit evidence that it "has assumed all rights, duties, obligations, and assets of the original employer" in order to establish that it is the

¹ See DOL Field Memorandum No. 47-92, dated May 7, 1992, published in 57 Fed. Reg. 31219 (1992).

successor-in-interest. In response, the petitioner submitted a variety of documentation, including copies of its occupational license application, application for utility services, bank documents, equipment lease forms, a provider participation agreement, insurance documents, and accounts payable records. As noted in the director's denial, there were no documents submitted which showed the manner by which the petitioner acquired the Nature Coast Regional Health Network. All the evidence relates exclusively to the Williston Family Practice, P.A. Although Dr. Atkinson's letter indicates that there was a change in corporate ownership, the petitioner has failed to submit any contract or agreement corroborating this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). We concur with the director's finding that the petitioner failed to establish that it is a successor-in-interest to the beneficiary's former employer. Counsel's basic assertions on appeal do not directly address the director's reasons for denying the petition based on the lack of evidence demonstrating a successorship-in-interest.

We further note that even if the evidence establishes that the petitioner is a successor-in-interest to the Nature Coast Regional Health Network, in order to be entitled to the priority date of the petition, the petitioner must demonstrate that the wage offer could have been met as of that date. The priority date is the date the request for a labor certification was accepted for processing by the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this case, the petition's priority date is January 6, 1998. The petitioner has not submitted any evidence demonstrating that the beneficiary's predecessor employer could have paid the proffered wage as of January 6, 1998. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

The petitioner has failed to establish that it is a successor-in-interest to the Nature Coast Regional Health Network. Furthermore, the petitioner failed to submit evidence showing that the proffered wage could have been paid at the time the application for a labor certification was accepted for processing by the Department of Labor.

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.