

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B5

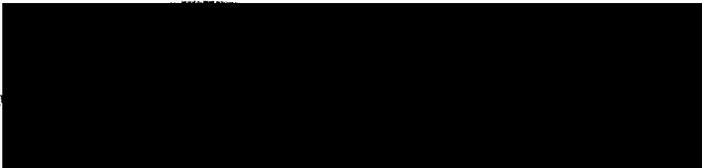


File: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2004  
WAC 03 030 53305

IN RE: Petitioner: [REDACTED]  
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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

CC: [REDACTED]

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a fiber optics components research and development company. It seeks to employ the beneficiary permanently in the United States as a Director of Chip Processing pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

Inphenix, Inc. filed the appeal. [REDACTED] President of Inphenix, Inc., asserts that Inphenix, Inc. "is a successor in interest to [the petitioner] through its purchase of [the petitioner] and Inphenix continues to conduct the same business as [the petitioner]." [REDACTED] submits no documentation of the purchase.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that "an affected party shall file an appeal." The regulation at 8 C.F.R. § 103.3(a)(1)(iii) defines "affected party" as "the person or entity with legal standing in a proceeding." The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

*Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by a company claiming to be the successor in interest to the petitioner. A December 10, 1993 memorandum issued by [REDACTED] Acting Executive Associate Commissioner for legacy Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)), entitled "Amendment of Labor Certifications in I-140 Petitions," provides:

If the petitioner has been bought out, merged, or had a significant change in its ownership, **the successor in interest must file a new I-140 petition.** In order to reaffirm the validity of the initial I-140 petition and the labor certification, the petitioner must establish that it is a successor in interest. A successor in interest must assume all of the rights, duties, obligations, and assets of the original employer and continue to operate the same type of business as the original employer. *See Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481 (Comm. 1986). The successor in interest has the burden of proof and must submit documentation showing change of Ownership and assumption of rights, duties, obligations, and assets of the original employer. The new I-140 petition should include a copy of the notice of approval of the initial I-140 petition and a copy of the labor certification and supporting documents. The new employer must also establish ability to pay the proffered wage.

(Emphasis added.) As stated above, the appeal includes no evidence that the entity that filed the appeal is the successor in interest to the petitioner. Regardless, where a Form I-140 petitioner is bought out, the new employer must file a new Form I-140 per the memorandum quoted above. Therefore, the appeal has not been properly filed, and must be rejected.

**ORDER:** The appeal is rejected.