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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: LIN 07 121 53738 Office: NEBRASKA SERVICE CENTER Date: NOV 10 2008

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)

ON 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, Chief
Administrative Appeals Office

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

The petitioner is a certified public accounting firm. It seeks to employ the beneficiary permanently in the United States as a supervising senior accountant 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, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a U.S. baccalaureate or a foreign equivalent degree.

On appeal, the petitioner asserts that the beneficiary does have the required credentials and asserts, in the alternative, that the beneficiary is an alien of exceptional ability. Subsequently, a new accounting firm, [REDACTED] P.C. (AWR) submits a letter asserting that they are now the successor-in-interest to the petitioner. This new firm submits a press release regarding a take over and evidence that this new firm has been paying the beneficiary.

For the reasons discussed below, we find that the beneficiary does not have the credentials necessary for the classification sought, either as a member of the professions holding an advanced degree or as an alien of exceptional ability. In addition, AWR have not established that they are the successor-in-interest to the petitioner.

The beneficiary possesses a foreign three-year bachelor's degree and is a member of the Institute of Chartered Accounts of India (ICAI) and the Institute of Cost and Works Accountants of India (ICWAI). Thus, the issue is whether these credentials are a foreign degree equivalent to a U.S. baccalaureate degree.

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd.*

Partners v. INS, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (an agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.")

Eligibility as an Advanced Degree Professional

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (October 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did

not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."¹ In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

¹ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

The record does not establish that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate. The initial evaluation from ██████████ of Spantran evaluates this degree as equivalent to three years of undergraduate education in the United States. The evaluation then asserts that it is the beneficiary's memberships in ICAI and ICWAI that are each equivalent to a U.S. baccalaureate. While the evaluation states that it is not valid without a Spantran dry seal, the dry seal is not present on the copy submitted by the petitioner. The new evaluation submitted on appeal from ██████████ of Foreign Academic Credentials (FACS) states that the beneficiary's three-year degree in combination with his ICAI membership is equivalent to a U.S. baccalaureate.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

On appeal, the petitioner asserts that membership in the ICAI and ICWAI involve three years of intensive coursework. The petitioner submits evidence that ICWAI candidates must undergo "coaching either directly or through correspondence and training" before sitting for the examinations, a program that takes three years. The petitioner also submits evidence that ICWAI members may apply for entry in Master of Philosophy and doctoral programs in India.

Regarding advanced degree professionals, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

The record contains no evidence that either the ICAI or the ICWAI is a college or university. Therefore, these memberships cannot satisfy the requirement of a foreign degree equivalent to a U.S. baccalaureate.

Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree” from a college or university the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree. Significantly, this interpretation, involving a three-year baccalaureate plus membership in the Institute of Chartered Accountants of India, was upheld in federal court. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006).

Exceptional Ability

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered.” Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate “a degree of expertise significantly above that ordinarily encountered.” The petitioner claims to meet the following criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

On appeal, the petitioner asserts that the beneficiary’s three-year degree and membership in the ICAI and ICWAI serve to meet this criterion.

Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the beneficiary’s degree is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

The Occupational Outlook Handbook (OOH), published by DOL, provides the following information about accountants:

Education and training. Most accountant and auditor positions require at least a bachelor’s degree in accounting or a related field. Beginning accounting and auditing positions in the Federal Government, for example, usually require 4 years of college (including 24 semester hours in accounting or auditing) or an equivalent combination of education and experience. Some employers prefer applicants with a master’s degree in accounting, or with a master’s degree in business administration with a

concentration in accounting. Some universities and colleges are now offering programs to prepare students to work in growing specialty professions such as internal auditing. Many professional associations offer continuing professional education courses, conferences, and seminars.

Some graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to accountant positions by demonstrating their accounting skills on the job.

See <http://www.bls.gov/oco/ocos001.htm#training> (accessed October 23, 2008 and incorporated into the record.)

We will consider the petitioner's licenses and memberships below. In light of the information provided in the OOH, we cannot conclude that a three-year degree is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the occupation. Even if we considered the beneficiary's ICAI and ICWAI memberships as the functional equivalent to a U.S. baccalaureate, it appears that a U.S. baccalaureate is the minimum education required for accounting positions that are not "junior." Thus, the functional equivalent of a U.S. baccalaureate is not indicative of or consistent with a degree of expertise above that ordinarily encountered in the occupation. Rather, a baccalaureate appears to be the ordinary education encountered.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

The petitioner must establish the beneficiary's eligibility as of the priority date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). In this matter, the priority date is December 6, 2006, the date the Form ETA 9089 was filed with DOL. 8 C.F.R. § 204.5(d). Thus, the petitioner must demonstrate that the beneficiary had 10 years of experience in the occupation, in this case as an accountant, as of December 6, 2006.

On the ETA Form 9089, Part J, the beneficiary indicated that he had worked as a supervising senior accountant for the petitioner as of March 25, 2002; as an accountant for [REDACTED] Accountants from November 2, 1997 through October 14, 2001; as an accountant for [REDACTED] and [REDACTED] in Abu Dhabi from December 26, 1996 through July 31, 1997; as an accountant for Lok Housing and Construction, Ltd., from December 13, 1995 through December 12, 1996 and as an accountant trainee for Siemens Ltd. in Mumbai from October 28, 1993 through September 30, 1995.

The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of qualifying experience shall consist of letters from employers including the name, address and title of the writer and a specific description of the duties performed by the alien.

The petitioner submitted evidence that he last entered the United States on October 30, 2005 on a nonimmigrant visa to work for the petitioner. CIS electronic records confirm that the petitioner filed

a nonimmigrant visa petition in behalf of the beneficiary in March 2002, SRC-02-134-50376. The record also contains a letter from ██████████, Managing Partner at Moore Stephens, confirming that the beneficiary worked in the audit and consultancy department of the firm “for 4 years.” Mr. ██████████ does not provide the beneficiary’s title or the exact dates of employment. A letter from ██████████ in Abu Dhabi confirms that the beneficiary worked for that firm from December 26, 1996 through July 31, 1997 where he was “engaged in the audits of trading, hotel and travel related businesses.” A letter from ██████████, Director at Lok Housing and Constructions, Ltd., confirms that the beneficiary worked there as a senior officer (finance) from December 13, 1995 through December 12, 1996. A letter from Siemens Ltd. Confirms that the beneficiary worked as “an officer in our Internal Audit division” from August 1994 through September 1995. Finally, the ICAI confirms that the beneficiary received training in corporate accounts and taxation from Siemens from October 28, 1993 through July 27, 1994.

The record does not establish that the beneficiary worked as an accountant for Siemens. While the beneficiary claims to have worked for Lok Housing and Constructions as an accountant, the letter from ██████████ only indicates that the beneficiary was a senior officer (finance). Mr. ██████████ indicates that in this position, the beneficiary “was involved in arranging institutional finance, handling Hire Purchase of lease finance operations, etc. for our Group.” It is not clear that these are accounting duties.

While the letters from ██████████ and ██████████ do not provide the beneficiary’s title, the duties appear consistent with those of an accountant. Thus, these letters establish 55 months of experience. The petitioner has never submitted a letter confirming how long the beneficiary has been working for the petitioner. We acknowledge that the petitioner also signed the ETA Form 9089. Accepting that the beneficiary has been working for the petitioner since March 2002 as claimed, the beneficiary has an additional 57 months in the occupation as of the filing date in December 2006. Thus, the petitioner has established that the beneficiary has a total of 162 months of experience as an accountant as of the priority date, eight months shy of the 10 years required.

Even if we concluded that the beneficiary has the necessary experience, he would only meet two of the regulatory criteria for the reasons stated above and below.

A license to practice the profession or certification for a particular profession or occupation

Section 203(b)(2)(C) of the Act provides that the possession of a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the beneficiary’s license is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

Although the petitioner does not assert that the beneficiary’s memberships are relevant to this criterion, we reiterate that the beneficiary is a member of the ICAI and the ICWAI. The record also contains evidence that the beneficiary is licensed as a Certified Public Accountant in Delaware. While the ICAI and the ICWAI issue “membership” certificates and the petitioner asserts that these “memberships” are effectively academic degrees, we find that the ICAI and ICWAI are, in effect,

licensing their members as chartered accountants when they issue membership certificates. Specifically, “membership” is based on passing examinations, similar to the licensing of certified public accountants in the United States. Thus, we find that the ICAI and ICWAI memberships are more properly considered under this criterion rather than the criterion set forth at 8 C.F.R. § 204.5(k)(3)(ii)(E).

We are satisfied that being licensed as a certified public accountant or chartered accountant is indicative of a degree of expertise significantly above that ordinarily encountered. Specifically, such a license is not required to work as an accountant. See <http://www.bls.gov/oco/ocos001.htm#training>. Moreover, the alien is licensed by both the ICAI and the ICWAI. Thus, we are satisfied that the beneficiary meets this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

On appeal, the petitioner asserts that the beneficiary “earns as per the prevailing wage requirement as mentioned in ETA [F]orm 9089 for the job position of a Supervising Senior accountant.” As stated above, the petitioner must establish that the beneficiary was eligible for the classification as of the priority date, December 6, 2006. The prevailing wage certified by DOL is \$75,088 annually. The record contains the beneficiary’s 2006 Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement reflecting that he earned \$68,277.43 (Medicare gross wages plus “GTL”). The petitioner does not explain how earning only the prevailing wage is indicative of a degree of expertise significantly above that ordinarily encountered in the occupation or otherwise “demonstrates exceptional ability” as required under 8 C.F.R. § 204.5(k)(3)(ii)(D). Moreover, the record does not establish that the beneficiary, as of the priority date, was even earning the prevailing wage.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

Evidence of membership in professional associations

The beneficiary is a member of the ICAI, the ICWAI and the Florida Institute of Certified Public Accountants. The record does not establish that membership in the Florida Institute of Certified Public Accountants requires anything other than licensure as a certified public accountant and the payment of dues. As stated above, these “memberships” effectively demonstrate that the beneficiary is a licensed chartered accountant and certified public accountant. We have already found that the beneficiary’s licenses meet the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). To consider these “memberships” as memberships in addition to licenses would be duplicative and render the requirement that an alien meet at least three criteria meaningless. In addition, if we were to accept the petitioner’s assertion that these “memberships” are functionally equivalent to academic degrees, they should be considered under 8 C.F.R. § 204.5(k)(3)(ii)(A).

In light of the above, we are not persuaded that the beneficiary meets this criterion independently and separately from the license criterion set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

The petitioner does not assert that the beneficiary qualifies for this criterion and the record contains no evidence relating to it.

In light of the above, the petitioner has not established that the beneficiary meets this criterion. Moreover, the regulation at 8 C.F.R. § 204.5(k)(4) requires that the job itself require an alien of exceptional ability. The job requirements certified by DOL do not suggest that the job requires an alien of exceptional ability. While the job requires a license, the job only requires a baccalaureate degree, typical in the field, and five years of experience rather than 10.

Successor-in-Interest

The regulation at 20 C.F.R. § 656.30(c)(2) provides: “A labor certification involving a specific job offer is valid only for the particular job opportunity, the alien for whom certification was granted, and for the area of intended employment stated on the Application for Alien Employment Certification form.”

In *Matter of Dial Auto*, the Commissioner held that a successor-in-interest relationship would be established if the petitioner documented that it had “assumed all of [the predecessor’s] rights, duties, obligations, etc.” 19 I&N Dec. at 482. Thus, a petitioner attempting to use an alien employment certification issued to a different business must submit documentation to show how the change of ownership occurred: buyout, merger, etc.; and documentation to show the petitioner will assume all rights, duties, obligations, and assets of the original employer.

On July 8, 2008, the AAO received a letter from [REDACTED] Audit Partner for AWR. Mr. [REDACTED] asserts that AWR has “acquired the assets” of the petitioner and is now the successor-in-interest. [REDACTED] submits a press release entitled “AWR Acquires Miami Practice” announcing that AWR has acquired the petitioner. The terms of the acquisition are not provided and the petitioner did not submit the contract or agreement for the acquisition. In light of the absence of specific evidence confirming that AWR has assumed all of the rights, duties, obligations and assets of the petitioner, the record does not establish that AWR is the successor-in-interest to the petitioner.

In addition, a successor-in-interest must establish its own ability to pay the proffered wage. AWR did not submit any of the evidence mandated at 8 C.F.R. § 204.5(g)(2). While the record contains some pay statements from this company, we will only consider payments to the alien when the record also contains the evidence mandated at 8 C.F.R. § 204.5(g)(2), namely federal tax returns, annual reports, or audited financial statements.

Finally, it is CIS procedural policy that when a claim of successor-in-interest is advanced, it must support a new Form I-140 petition. See James A. Puleo, Assoc. Commr., *Amendment of Labor Certifications in I-140 Petitions*, HQ 204.24-P (Dec. 10, 1993).

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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.