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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



JUN 18 2002

File: WAC 01 052 52174 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a fabric wholesaler, import, and converter business. It seeks to employ the beneficiary permanently in the United States as a bookkeeper. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the name of the business on the labor certification was Pacific Breeze Homes while the petitioner's company is Fabric & Fabric, Inc. The director requested additional evidence regarding a successorship in interest to establish that the petitioner had bought Pacific Breeze Homes.

In response, counsel states that "the current Immigration Petition for Alien Worker, Form I-140, is a substitution of employers on a previously approved labor certification, rather than a successor in interest."

On appeal, counsel reiterates his argument that "a change in the employer-petitioner during the certification process - did not automatically invalidate the application under section 656.30(c)(2) because the job opportunity and the area of intended employment were exactly the same." Counsel further argues that:

In the instant case, the original Labor Certification Application with Pacific Breeze Homes has never been revoked. [REDACTED], is within the same geographic area as Pacific Breeze Homes (see Exhibit 2, detailing the specific distance and directions from Pacific Breeze Homes.) Hence, the area of intended employment is preserved, as it remains an area within normal commuting distance, and the job offered to [the beneficiary] is the same (Full Charge Bookkeeper), as it involves the same type of job duties and the same minimum requirements. As such, a change in employers is permissible pursuant to 20 CFR 656.30(c)(2), and a new Application is not necessary where the specific job being offered is:

1. The same job as with the original Labor Certification Application;
2. The alien for whom Certification was granted is the same; and
3. The area of intended employment is the same.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

A petition for an skilled worker must be accompanied by a labor certification at the time of filing. 8 C.F.R. 204.5(l)(3)(i). 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 ETA-750. 20 C.F.R. 656.30(c)(2). If any of these factors change, the Employment and Training Administration's Technical Assistance Guide No. 656-Labor Certifications provides at page 104 that a new labor certification is generally required.

In this case, the specific job offer was made by Pacific Breeze Homes, and since the petitioner has changed, a new labor certification is required.

No additional evidence has been submitted in support of the appeal. Therefore, the petition may not be approved.

This denial is without prejudice to the filing of a new petition accompanied by the appropriate documentary evidence and fee.

ORDER: The appeal is dismissed.