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U.S. Department of Homeland Security

Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: WAC 02 073 51909

Office: CALIFORNIA SERVICE CENTER

Date: **DEC 05 2003**

IN RE: Petitioner:
Beneficiary:

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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, California 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)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a furniture manufacturer seeking to employ the beneficiary as a wood carver. 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 employer who initially filed the Application for Alien Employment Certification.

On appeal, counsel asserts that the director did not consider that the petitioner is the parent company of the employer that filed the Application for Alien Employment Certification.

Section 203(b)(3)(A)(i) of 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.

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 July 6, 1998, [REDACTED] filed an Application for Alien Employment Certification (Form ETA 750) with the Department of Labor. The priority date was established as September 30, 1999 when the Application for Alien Employment Certification was initially received by the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner in this case, "Innovative Office Concepts, Inc.," filed an immigrant petition (I-140) on December 26, 2001. Documentation submitted with the petition included a completed uncertified Form ETA 750 signed by the petitioner's agent, copies

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

of the petitioner's Form 1120, U.S. Corporation Income Tax Returns for 1998 through 2000, and a copy of an "Asset Purchase Agreement," executed on May 30, 1997, between [REDACTED] and [REDACTED] Inc. This agreement described the purchase of the real and personal property of the [REDACTED] y [REDACTED]

On March 12, 2002, 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 successor-in-interest to [REDACTED]. In response, the petitioner again submitted copies of its 1998 to 2000 corporate tax returns, copies of its quarterly wage and withholding reports for the quarters ending June 30, 2001 to March 31, 2002, and a May 20, 2002 letter from [REDACTED] President." This letter states:

[REDACTED] was purchased effective July 1, 1997. On June 18, 1997 our fictitious name filing, [REDACTED] was filed with the Secretary of the State of California. It is the same company, however, on July 1, 1997, the company came under new ownership and a new name.

The petitioner also re-submitted a copy of the May 1997 Asset Purchase Agreement between [REDACTED] Inc. and [REDACTED] attached to a State of California, Secretary of State letter dated June 19, 1997. The petitioner was not mentioned in either of these documents.

As noted in the director's denial, there are no documents contained in the record that specifically demonstrate the manner by which the petitioner acquired the original employer named on the labor certification [REDACTED] Inc. There is no evidence in the record corroborating the name change as indicated by the Mr. [REDACTED] in his letter dated May 20, 2002. All the evidence relates exclusively to the petitioner standing alone, or to the asset purchase between [REDACTED] and [REDACTED] Inc. 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). It is also noted that although the [REDACTED] May 2002 letter asserts that [REDACTED] came under a new name and ownership in July 1997, the evidence fails to clarify why [REDACTED] filed the Application for Alien Employment Certification in July 1998 under its former name. We concur with the director's finding that the petitioner failed to establish that it is a successor-in-interest to the original employer named on the labor certification. As noted by the director, the successor-in-interest has the burden to show that it has assumed the rights, duties, obligations, and assets of the original employer. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

On appeal, counsel re-submits the same evidence as noted above and generally asserts that it shows that the petitioner is the successor-in-interest to the original employer named on the labor certification.

In view of the foregoing, we cannot conclude that the petitioner has persuasively established that it has assumed the rights, duties, obligations, and assets of the original employer on the labor certification as its successor-in-interest. 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.