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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

*BK*



File: WAC 01 244 60607

Office: CALIFORNIA SERVICE CENTER

Date: DEC 10 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: SELF-REPRESENTED

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

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a wholesale distributor of computer parts. It seeks to employ the beneficiary permanently in the United States as a warehouse manager. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the labor certification submitted is a copy of one issued to another employer.

On appeal, the petitioner submits a statement and additional evidence.

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.

The petitioner submitted a previously approved labor certification issued to Burger Factory. This business had obtained a labor certification for a "chief cook." The director denied the petition, noting that the petitioner had not provided documentation that it had taken over the original petitioner's business.

As noted by the director, the regulation at 20 C.F.R. § 656.30(c)(2) provides that a labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment.

On appeal, the petitioner submits a copy of a business license certificate for Mace Group, Inc. issued on July 15, 2002, and states:

I am the same petitioner and employer has appeared on the original "labor certification." I have demonstrated that the previous organization is a successor (sic) of interest and based on taxes previously submitted I have established that fact. The second issue is based on the fact that I have demonstrated (sic) the ability to pay as presented on my income taxes. My ability to pay is based on the total expensive and his wages is part of that.

The record contains no evidence that the petitioner qualifies as a successor in interest to Burger Factory. This requires documentary evidence that the petitioner has assumed all the rights, duties, and obligations of the predecessor company. The assertion that the petitioner took over another company does not establish that it is a successor in interest. In addition, in order to maintain the original priority date, a successor in interest must demonstrate that the predecessor had the ability to pay the proffered wage. In this case, the petitioner has not established the financial ability of the predecessor enterprise to have paid the certified wage at the time of filing the petition. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

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 sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.