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U.S. Department of Homeland Security
Citizenship and Immigration Services

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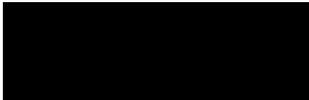
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



DEC 16 2003
Date:

File: WAC 01 244 52632 Office: California Service Center

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Other Worker Pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(iii).

ON BEHALF OF PETITIONER:



PUBLIC COPY

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 the 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 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 rejected.

The petitioner is an individual who seeks to employ the beneficiary permanently in the United States as a home care attendant. The petition is accompanied by a copy of an individual labor certification approved by the Department of Labor and issued to another employer.

On appeal, counsel submits a brief 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 copy of a previously approved labor certification issued to Bess Greenschlag. The director denied the petition, noting that the petitioner had not provided documentation that it was a successor in interest to the original employer. The director further noted that "counsel's arguments appear to be focused on establishing a difference between a successor in interest and a substitution of employers/petitioners." Finally, the director noted that the petition was denied due to a lack of an appropriate labor certification filed with the petition.

On appeal, counsel reiterates his argument that "[t]he regulatory construction of 20 CFR 656.30(c)(2) indicates that substitution of employers is permissible under the interpretation and intent of the Federal Regulations."

Contrary to the assertions of counsel, Federal Regulations do not permit the transfer or substitution of employers on labor certifications. See *Matter of Joran Rosenfield*, 99-INA-158 (BALCA Jan. 6, 2000). This petition, therefore, is not accompanied by the required individual labor certification.

8 C.F.R. § 103.1(f)(3)(iii) states in pertinent part:

Appellate Authorities. In addition, Administrative Appeals Office exercises appellate jurisdiction over

decisions on:

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

There is no appeal from a denial based on the lack of a certification by the Secretary of Labor. It is noted that the director erroneously allowed the petitioner to file the appeal. The director's error does not, and cannot, supersede the regulation regarding the ability to appeal a denial based upon a lack of certification by the Secretary of Labor. Therefore, the appeal must be rejected.

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 rejected.