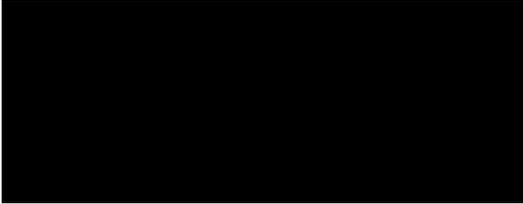




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE: WAC 00 127 53112 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2005

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

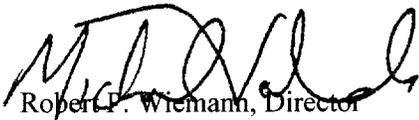
PETITION: Immigrant Petition for Other Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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 F. 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 rejected.

The petitioner is a guest home. It seeks to employ the beneficiary permanently in the United States as a live-in manager. The petition was not accompanied by a certification from the Department of Labor. (It is noted that the petitioner stated that the original labor certification was in another file that was being held by CIS in Manila, Philippines.) The director denied the petition because he determined that the petitioner had not submitted the original labor certification as required and because the petitioner had not established its continuing ability to pay the proffered wage from the priority date.

The regulation at 8 C.F.R. § 204.5 (l)(3) states in pertinent part:

Initial evidence –(i) *Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor’s Labor Market Information Pilot Program. . .

The regulation at 8 C.F.R. § 102.2(b)(4) states:

Submitting copies of documents. Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP-66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the Service.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1(2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, “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.” 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.).

Since the petition is not supported by an original labor certification from the Department of Labor, this office lacks jurisdiction to consider an appeal from the director’s decision. It is noted that in his denial, the director referred to the fact that the U.S. Embassy in the Philippines did not return the ETA 750. Counsel stated that the “inability of INS to obtain the original/copy of ETA 750 is totally beyond the control of the petitioner.” However, this petition cannot be adjudicated without the ETA 750. Therefore, the appeal must be rejected. Further, it is also noted that if the petition were appealable, the ability to pay the proffered wage for the years 1991 to 1993 is still missing, and the petitioner would be denied for this reason. The record contains no evidence that the petitioner qualifies as a successor-in-interest. This status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. The fact that

the petitioner is doing business at the same location as the predecessor does not establish that the petitioner 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.

Moreover, the petitioner must establish the financial ability of the predecessor enterprise to have paid the certified wage at the priority date. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). In the instant petition, there is no evidence that the predecessor company had the ability to pay the proffered wage. However, the AAO is returning the file to the director who has the discretion to reopen his decision on service motion and adjudicate the petition on its merits.

ORDER: The appeal is rejected.