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20 Mass, N.W., Rm. A3000  
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U.S. Citizenship  
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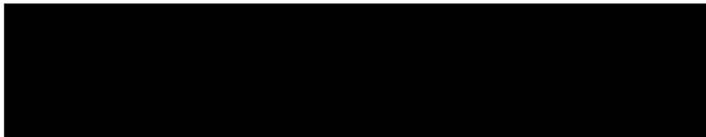


FILE: WAC 03 212 50949 Office: CALIFORNIA SERVICE CENTER Date: AUG 01 2006

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)

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 P. Wiemann, Chief  
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 director determined that the petition in this matter could not be approved because the original certified Form ETA 750 Application for Alien Employment Certification lists, as the employer [REDACTED] rather than the petitioner, and that the petitioner was not a successor in interest to [REDACTED]. Additionally, the director determined that the evidence failed to establish the petitioner's ability to pay the proffered wage continuously from the priority date.<sup>1</sup> Further, the petition, when filed, was not accompanied by an approved Form ETA 750, an application for Schedule A designation, or documentation that the beneficiary qualified for the Department of Labor's Labor Market Information Pilot Program, as required by 8 C.F.R. § 204.5(l)(3)(i).

For the petitioner to establish that it was the successor-in-interest to [REDACTED] the evidence must demonstrate that change in ownership occurred and how it occurred. The evidence must also show that the petitioner had assumed all of the rights, duties, obligations, and assets of the original employer and continues to operate the same type of business as the original employer. The record contains no such evidence.<sup>2</sup> See *Matter of Dial Repair Shop* 19 I&N Dec. 481 (Comm. 1981).

A petitioner claiming to be a successor-at-interest must also show that its predecessor had the ability to pay the proffered wage for the period from the priority date and continuing throughout the time it owned the petitioning company. The record also contains no such evidence. The successor-at-interest must also show that it has had the continuing ability to pay the proffered wage, starting from the date it acquired the business. In the instant case, the petitioner, formerly known as [REDACTED]<sup>3</sup>, has only established its ability to pay the proffered wage in the year 2001.<sup>4</sup>

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 No. 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2004). Pursuant to that delegation, the AAO's jurisdiction is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(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.).

This office has no jurisdiction over a petition denied based upon lack of a labor certification. As the petition in this matter was denied for that reason, among others, this office has no jurisdiction and the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> The record contains no tax return or other financial documentation pertaining to [REDACTED]

<sup>2</sup> The only pertinent document is the petitioner's October 28, 2004 declaration that the petitioner "will assume all rights, duties, obligations and assets of [REDACTED]. The [beneficiary's] change of employer occurred because, as of March, 2003, [REDACTED] went out of business. There was no buyout, merger or trade of business."

<sup>3</sup> On appeal, counsel submits certified articles of amendments establishing the petitioner's legal name change.

<sup>4</sup> The record contains the petitioner's Form 1120S returns for 2000-2003 establishing that the petitioner, had the ability to pay the proffered wage only in 2001, based upon net current assets of \$68,990.

WAC 03 212 50949

Page 3