

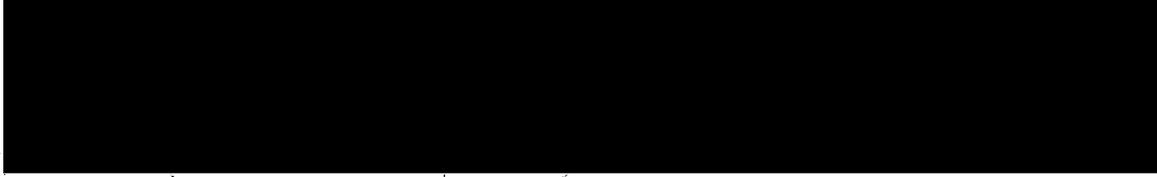
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B6



FILE: WAC 04 224 51899 Office: CALIFORNIA SERVICE CENTER Date: **NOV 29 2006**

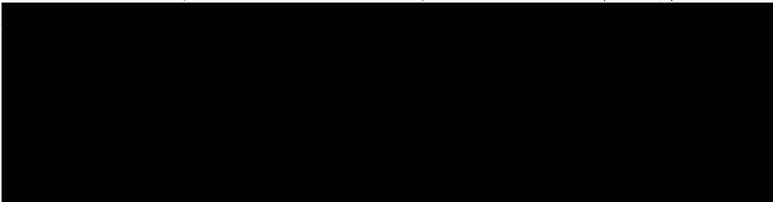
IN RE: Petitioner:

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 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. The director determined that the petitioner had not filed a Form ETA 750, Application for Alien Employment Certification, Parts A and B (labor certification or Form ETA 750) with the petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's May 10, 2005 denial, the single issue in this case is whether or not the petitioner filed a proper labor certification with the petition.

The instant petition was filed by Santbaba Hazarasinghji Corporation dba Natraj Cuisine Of India. The petitioner filed the petition without a Form ETA 750. On appeal, counsel asserts that the petitioner wants to use an original labor certification approved by the United States Department of Labor (DOL) on behalf of a different employer, and that the transfer of the labor certification should be allowed since the beneficiary will be doing the same job and will be paid the same wage as stated on the original labor certification.

Despite counsel's assertions, the regulations at 8 C.F.R. §§ 204.5(a)(2) and 204.5(l)(3)(i) require that any Form I-140 petition filed under the preference category of INA § 203(b)(3) be accompanied by a labor certification. The record lacks a Form ETA 750. The regulation at 20 C.F.R. § 656.30(e) provides for the issuance of duplicate labor certifications by the DOL only upon the written request of a consular or immigration officer. The record contains no evidence that the petitioner has obtained or requested an official duplicate labor certification.

Further, in the instant case, the labor certification referenced in counsel's brief on appeal was not issued to the petitioner. The director indicated that the original labor certification was issued to the beneficiary's previous employer, Star Cuisine of India. The DOL does not certify a Form ETA 750 labor certification to a potential employee/beneficiary, but rather to an employer/applicant. Under certain circumstances, the petitioner may substitute a beneficiary. The beneficiary is not permitted, however, to substitute a petitioner. An exception to this rule is triggered if the petitioner is purchased, merges with another company, or is otherwise under new ownership. The successor-in-interest must submit proof of the change in ownership and of how the change in ownership occurred. It must also show that it 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. See *Matter of Dial Repair Shop*, 19 I&N Dec. 481 (Comm. 1981). The record contains no evidence that the petitioner in this matter is the successor-in-interest to the original employer. Further, the record does not contain a Form ETA 750. Counsel submits no documentary evidence on appeal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has failed, therefore, to demonstrate that the petition may be approved.

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.