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

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File: [Redacted] Office: CALIFORNIA SERVICE CENTER
WAC 04 257 53055

Date: SEP 26 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 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 Director, California Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a manufacturing company. It seeks to employ the beneficiary permanently in the United States as a sewing supervisor. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The employer named on that Form ETA 750 labor certification, however, is not the petitioner. The director determined that the petitioner had not established that it is the successor-in-interest to the employer named on the labor petition and denied the petition accordingly.

On appeal, counsel submits a statement.

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 nature, for which qualified workers are not available in the United States.

The Department of Labor does not issue a Form ETA 750 labor certification to a potential employee/beneficiary, but to a potential employer/petitioner. 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 employer named on the approved Form ETA 750 in this case is Advanced Thermal Products, Incorporated. The petitioner on the Form I-140 petition is [REDACTED]. With the petition counsel submitted no evidence that [REDACTED] is the true successor of [REDACTED] within the meaning of *Matter of Dial Auto Repair Shop, Inc., supra.*

On October 17, 2004 the California Service Center issued a notice of intent to deny in this matter. That notice observed that the record contained no evidence that the substituted petitioner is entitled to rely on the labor certification issued to the previous employer.

In response counsel submitted an unsigned letter dated November 15, 2004 and addressed "To Whom It May Concern." Although that letter appears on plain stationery it is headed, "Employer's Letterhead." The body of that letter states that the substituted petitioner has "assumed all [of the original petitioner's] rights, duties, obligations and assets," operates the same type of business in the same city, and that the terms of the job offer are unchanged.

¹ CIS records show that another Form I-140 petition, WAC 01 008 50115, was previously submitted by [REDACTED] for the instant beneficiary. That petition was approved on June 21, 2001. Today's decision, however, concerns only WAC 04 257 53055, filed by [REDACTED] on September 21, 2004.

Finally, that unsigned unattributed letter states that the original petitioner, [REDACTED] [REDACTED] "is not longer an independent entity and has completely been dissolved."

On December 13, 2004 the Director, California Service Center, issued the decision in this matter. The director noted that a search of California corporations revealed that [REDACTED] [REDACTED] the original petitioner in this matter, is still an active corporation. The decision further reveals that a phone call from USCIS to [REDACTED] revealed that it continues in business. The director found that the evidence of record does not demonstrate that the substituted petitioner is the original petitioner's true successor within the meaning of the decision in *Dial Auto Repair Shop, Inc., supra*.

On appeal counsel stated,

The Petitioner has already furnished to your office a statement from the new owner that he has assumed all of the rights, duties, obligations and assets of the original employer.

Counsel did not address the evidence that, contrary to the assertion of the unsigned unattributed letter, the only evidence in the record pertinent to the substitute petitioner's successorship, the original petitioner is still in existence and continues to do business. This office finds that the unattributed unsigned statement is insufficient to overcome the evidence showing that the original petitioner is still in existence and the substituted petitioner is not, therefore, its true successor within the meaning of *Dial Auto Repair Shop, Inc., supra*.² The petition was correctly denied on that basis.

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.

² Even the fact that Insultech did not acquire rights to [REDACTED] name is sufficient to demonstrate that the substituted petitioner did not acquire all of the original petitioner's assets and is not, therefore, its true successor.