

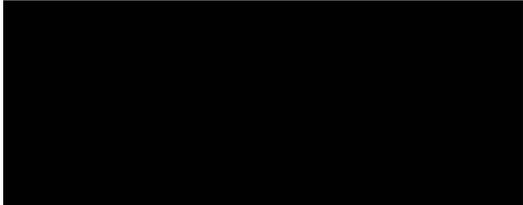
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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 29 2006

WAC 04 025 51775

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled 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 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 dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a chef/cook. The director determined that the petitioner had not established that it [REDACTED] was the successor-in-interest to [REDACTED]¹ and denied the petition accordingly.

Counsel submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, counsel asserted serially that the director arrived at his decision “by misinterpreting evidence and then using it negatively against ...[the petitioner]” without stating what evidence was misinterpreted and how it was used negatively; that “CIS failed to consider material evidence” without specifying what material evidence in the record of proceeding; that “CIS failed to adequately consider [submitted] background documentation” without specifying what documentation counsel was referencing or why it was important; and, that “CIS failed to recognize that [REDACTED] sole intention ... [was] to sponsor ...[the beneficiary]” where the director stated that, or why it was relevant to the issue for which the petition was denied above stated.

Further, counsel opines that [REDACTED] (owner) [REDACTED] (former owner of [REDACTED]) was the same company but only with two restaurants,” and that CIS failed to recognize this fact.²

The director found that there were two companies and that the petitioner failed to demonstrate that the petitioner [REDACTED] was the successor-in-interest to [REDACTED]. In his contention counsel is begging the question. He has avoided answering the director’s request for evidence in this matter, or, proving his contention upon appeal on that issue by “self-certification” as the director characterized his conduct. Counsel stated on appeal, without proof or substantiation, that both restaurants are the same company.^{3, 4}

Counsel selected on the appeal form the statement that indicated that counsel would be submitting a brief or additional evidence within 30 days, however, despite a request from the AAO for a brief and/or additional evidence from counsel, none was submitted. On July 7, 2006, counsel confirmed that none was submitted.

¹ The petitioner was [REDACTED] and, the applicant/employer on the labor certification was [REDACTED]

² We believe that counsel actually meant to contend that both restaurants are the same company.

³ In order for a “successor in interest” determination to be made, the following documentation should be submitted along with a new I-140 petition: a copy of the notice of approval for the initial Form I-140; a copy of the labor certification submitted with the initial Form I-140; documentation to establish the ability to pay the proffered wage - evidence of this ability must be either in the form of copies of annual reports, federal tax returns, or audited financial statements; a fully executed uncertified labor certification (Form ETA 750, Parts A & B) completed by the petitioner; documentation to show how the change of ownership occurred: buyout, merger, etc.; and documentation to show the petitioner will assume all rights, duties, obligations, and assets of the original employer. An successor in interest must establish that it has assumed all of the rights, duties, obligations, and assets of the original employer; continue to operate the same type of business as the original employer; and, establish that the new business has the ability to pay as of the priority date. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1981).

⁴ Since [REDACTED] went out of business, and a new restaurant was then commenced in a new location named [REDACTED] the director’s finding requesting additional evidence on this material fact was reasonable.

Counsel's statement on appeal contains no specific assignment of error. Alleging that the director erred in some unspecified way is an insufficient basis for an appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.