U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

AUG 26 2004

File: WAC 02 140 50547 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

cc: [redacted]

identifying data deleted to prevent cl[illegible] warranted invasion of personal privacy

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DISCUSSION: The Director, California Service Center, denied the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an automobile repair business. It seeks to employ the beneficiary permanently in the United States as an auto mechanic. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

On appeal, an entity purporting to be a successor-in-interest to the petitioner submits a brief and additional evidence.

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 petition and the Form ETA 750 both identify the petitioner as Rialto Unocal, 101 W. Foothill Blvd, Rialto, California. On appeal, counsel[1] appears on behalf of Petrolux Corporation (Petrolux), of Diamond Bar, California. Counsel asserts that Petrolux is a successor-in-interest to the original petitioner, having acquired it on May 1, 2002. Counsel offers various documents in support of the claim that Petrolux is a successor-in-interest, including: articles of incorporation for Petrolux; a "Bill of Sale" between Petrolux and Rialto Unocal; a Bulk Sale Certificate as filed with the State of California Franchise Tax Board; a Certificate of Release of Buyer as filed with the Employment Development Department of California; and an "Escrow Statement." Counsel also offers an affidavit from the President of Petrolux certifying that Petrolux is operating as a successor-in-interest to Rialto Unocal.

We find that that record does not clearly support counsel's contention that Petrolux is in a position to pursue the instant petition, or that it qualifies as a successor-in-interest. Assuming that Petrolux wishes to pursue the instant petition, Petrolux must submit its own I-140 petition on behalf of the beneficiary. *See Memorandum, Amendment of Labor Certifications in I-140 Petitions, HQ 204.24-P from James A. Puleo, Acting Executive Associate Commissioner, Office of Operations (December 10, 1993).*[2] The record does not contain such a petition, and consequently, the appeal must be rejected.

Should Petrolux seek to submit its own I-140 petition, we note that it must still demonstrate that it is a successor-in-interest to the original petitioner, Rialto Unocal. 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. The successor-in-interest petitioner is obliged to show that its predecessor had the ability to pay the proffered wage beginning on the priority date and continuing throughout the period during which it owned the petitioning company. The successor-in-interest must also

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[1] We note that the original petitioner, Rialto Unocal, pursued the petition with a different representative, Eduardo Vigil, and the appeal is self-represented. It appears that the current representative entered an appearance subsequent to the filing of the appeal.

[2] The guidance set forth in this memorandum is pertinent to any future petition Petrolux may choose to file.

show that it has had the continuing ability to pay the proffered wage beginning on the date it acquired the business. *See Matter of Dial Auto Repair Shop* 19 I&N Dec. 481 (Comm. 1981).

As the entity filing the appeal is not an affected party, the appeal must be rejected. 8 C.F.R. §§ 103.3(a)(1)(iii), (2)(v). This rejection is without prejudice to any future petition Petrolux may choose to file.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.