



U.S. Citizenship
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Services

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File: [Redacted] Office: TEXAS SERVICE CENTER
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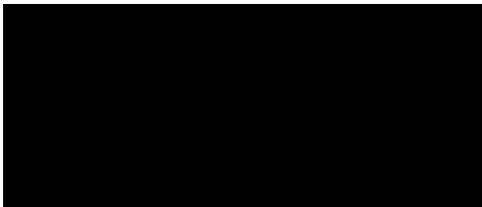
Date: DEC 05 2005

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 an automobile repair shop. It seeks to employ the beneficiary permanently in the United States as a mechanic. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. Subsequently, the director found that the employer named on the Form ETA 750 labor certification no longer operates the business. The director determined that the company that counsel sought to substitute as petitioner in this matter had not established that it is the true successor of the employer named on the labor petition and the petition. The director denied the petition accordingly.

On appeal, counsel submits a brief and new 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 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 [REDACTED] Auto Care Incorporated. The petitioner on the Form I-140 petition, which was filed on August 22, 2002, is [REDACTED]'s Auto Care Incorporated.

On November 26, 2003 the Texas Service Center requested evidence pertinent to the beneficiary's qualifications, the petitioner's incorporation and status, and the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

In response, counsel submitted a letter, dated February 19, 2004. In that letter counsel stated that the business operated by the petitioner, [REDACTED] Auto Care, Incorporated, was sold to [REDACTED] Service Center, Incorporated. Counsel further stated that [REDACTED] Service Center wished to continue the instant petition as the petitioner's successor-at-interest.

In support of the proposition that Andre's Service Center is the true successor of Brother's Auto Care within the meaning of *Matter of Dial Auto Repair Shop, Inc.* 19 I&N Dec. 481 (Comm. 1981) counsel submitted (1) the original petitioner's articles of dissolution showing that it was dissolved on October 17, 2003, (2) a letter, dated February 9, 2004, from [REDACTED] the owner of Andre's Service Center, (3) articles of incorporation showing that [REDACTED] Service Center incorporated on October 21, 2003, (4) a

Motor Vehicle Repair Registration Certificate issued to Andre's Service Center on November 17, 2003, for the premises at [REDACTED] in Jacksonville, Florida, (5) other documents indicating that [REDACTED] Service Center now occupies that address, and (6) an amended Form I-140 petition listing [REDACTED] Service Center as the petitioner.

In his February 9, 2004 letter [REDACTED] states that he bought the business from [REDACTED] who previously owned [REDACTED] Auto Care. Mr. [REDACTED] further stated that he wished to continue to extend the offer of employment to the beneficiary. Finally, [REDACTED] stated that his company has assumed all of the liabilities, rights, duties, and assets of the original petitioner and that his business is the original petitioner's successor-at-interest.

The director determined that the evidence submitted did not establish that [REDACTED] Service Center is the original employer's successor-in-interest and, on March 2, 2004 denied the petition.

On appeal, counsel stated that [REDACTED] Service Center is offering the beneficiary the same position at the same pay at the same type of business at the same address. Counsel states that the only difference is that the identity of the business at that address has changed.

With the appeal counsel submits additional photocopies of the documentation previously submitted. Counsel also submits a Bill of Sale, dated April 22, 2004 and signed by both [REDACTED]. Counsel states that the Bill of Sale shows that the petitioning business was sold for \$50,000 and that all of the assets, rights, and liabilities transferred with that sale. That document does not, in fact, state that all of the petitioner's assets, rights, and liabilities transferred to Andre's Service Center.

Further, because that document is dated April 22, 2004 it was clearly not created contemporaneously with the sale of the business, which appears to have occurred sometime during October or November of 2003. That document was created shortly after the instant petition was denied, apparently to submit as evidence on appeal. Because the Bill of Sale did not serve as an actual Bill of Sale, this office finds that it is of no evidentiary value.

Pursuant to *Matter of Dial Auto Repair Shop, Inc., supra*, the substituted petitioner 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. The record contains sufficient evidence to show that the change in ownership has occurred, and this office finds that the evidence that the change in ownership was pursuant to a sale, rather than some other kind of transfer, is also sufficient.

[REDACTED] Service Center has not, however, demonstrated that it assumed all of the rights, duties, obligations, and assets of [REDACTED] Auto Care, Incorporated. The only evidence that [REDACTED] Service Center has assumed all of those rights, duties, obligations, and assets is the assertions of the new owner. The evidence does not indicate, for instance, that [REDACTED] Service Center would be obliged to honor warranties of mechanical work performed by [REDACTED] Auto Care. [REDACTED] Service Center has not, therefore, demonstrated that it is the true successor of [REDACTED] Auto Care, Incorporated, within the meaning of *Dial Auto Repair Shop* and the petition was correctly denied on that ground.



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.