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FILE: [REDACTED]  
SRC 03 083 51600

Office: TEXAS SERVICE CENTER

Date: **MAR 19 2007**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. According to the director's decision in the matter the director stated that a request for evidence was issued to the petitioner on January 27, 2005. Counsel states, *inter alia*,<sup>1</sup> on appeal that no request for evidence was received. There is no request for evidence found in the record of proceeding in this matter. The director issued a decision in the matter dated May 17, 2005 based, in part, on the failure of the petitioner to submit additional evidence in response to the request for evidence. The petitioner appealed the director's decision. The previous decision of the director dated May 17, 2005 will be withdrawn. The appeal will be remanded to the director.

The petitioner is a market, deli and bakery. It seeks to employ the beneficiary permanently in the United States as a baker. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it is a successor-in-interest according to legacy Immigration and Naturalization Service's, now Citizenship and Immigration Services, (CIS), memo HQ 204.24-P/HQ 205.25-P, the regulation at 20 C.F.R. § 656.30(c)(2),<sup>2</sup> and, according to the case precedent, *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).<sup>3</sup> The director denied the petition accordingly.

On appeal, the petitioner submitted evidence of its timely response concerning the successor-in-interest issue raised by director. Because the director erroneously states that a request for evidence was sent to the petitioner and no response was received, the petitioner's evidence concerning whether or not the petitioner has established successor-in-interest status has not been evaluated by the director. Thus, the case is being remanded to the director to consider the evidence and to issue a new decision. The Form I-290B should have been treated as a motion to reopen and the petition adjudicated on the merits.

**ORDER:** The decision of the director is withdrawn. The matter is remanded for further action and consideration.

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<sup>1</sup> Counsel also complained that the subject I-140 petition as well as an I-485 application were not properly receipted, necessitating counsel re-filing them. The subsequent filings at SRC 04 026 52351 were adjudicated and then denied. This appeal is on the earlier filing.

<sup>2</sup> The regulation at 20 C.F.R. § 656.30 (c)(2) entitled "Validity of and invalidation of labor certifications" states in pertinent part:

\* \* \*

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity, the alien for whom certification was granted, and for the area of intended employment stated on the Application for Alien Employment Certification form.

<sup>3</sup> Successor-in-interest status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. The fact that the petitioner is doing business at the same location as the predecessor does not establish that the petitioner is a successor-in-interest. In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. Moreover, the petitioner must establish the financial ability of the predecessor enterprise to have paid the certified wage at the priority date. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).