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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services



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FILE: [Redacted]  
SRC 08 074 51154

Office: TEXAS SERVICE CENTER

Date: AUG 10 2009

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Other 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as an other worker. The director determined that the petitioner failed to establish its ability to pay the proffered wage at the time of filing of the labor certification, March 23, 2005, and continuing until the present. The director denied the petition, accordingly.

On appeal, counsel stated:

The Service is making an argument that the corporation has changed and therefore, the petition cannot be approved. Counsel has presented evidence that the two corporations in question are owned by the same employer, the employees from one corporation where [sic] inherited by the second corporation. The debts of the previous corporation were incurred by the subsequent corporation. And a successor in interest situation was created. Counsel will submit a brief regarding this issue with in 30 days.<sup>1</sup>

Counsel stated that a brief and/or additional evidence would be submitted to the AAO within 30 days. The AAO received the appeal on November 26, 2008. As of this date, approximately 9 months later, the AAO has received nothing further. In fact, on December 30, 2008, the AAO received correspondence from counsel on behalf of the petitioner stating that the employer no longer wishes to pursue the appeal and that no additional evidence will be submitted.

The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states in pertinent part:

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<sup>1</sup> The director denied the petition only on the basis that the petitioner did not establish its ability to pay the proffered wage. The director did not reference any issue related to successorship. Although based on the record before the AAO, the petition should have been denied on this basis as Form ETA 750 lists a different employer than that on Form I-140. The record contains no evidence that the petitioner qualifies as a successor-in-interest to Bi County Cleaning, Inc. d/b/a The Maids. This 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).

*Additional time to submit a brief.* The affected party may make a written request to the AAO for additional time to submit a brief. The AAO may, for good cause shown, allow the affected party additional time to submit one.

The regulation at 8 C.F.R. § 103.3(a)(2)(viii) states in pertinent part:

*Where to submit supporting brief if additional time is granted.* If the AAO grants additional time, the affected party shall submit the brief directly to the AAO.

Counsel, here, did not request any additional time beyond the 30 days listed on Form I-290B.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically identified any erroneous conclusion of law or statement of fact and has not provided any additional evidence on appeal. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.