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U.S. Citizenship
and Immigration
Services

B6

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 11 2009**

WAC 01 242 50653

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Other Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

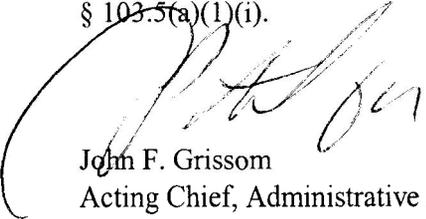
ON BEHALF OF PETITIONER:



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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was a garment manufacturer. It sought to employ the beneficiary permanently in the United States as a sewing machine operator. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL).¹ 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. The director denied the petition on accordingly.

The instant appeal was filed on March 30, 2007 by the petitioner. During the adjudication of the appeal, evidence came to light that the petitioner in this matter had been dissolved. Since the business was dissolved, it is no longer an active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. See the website (accessed on June 16, 2009) at the California Business Portal at <http://kepler.ss.ca.gov/corpdata/ShowAllList?QuerCorpNumber=C2095438&printer=yes> for the Secretary of State.

On June 26, 2009, the AAO issued a Notice of Derogatory Information (NDI) and informed the petitioner and counsel of the following:

¹ It is noted that the current beneficiary is the second individual to be substituted on the approved labor certification. Substitution of beneficiaries was permitted by the DOL at the time of filing this petition. DOL had published an interim final rule, which limited the validity of an approved labor certification to the specific alien named on the labor certification application. See 56 Fed. Reg. 54925, 54930 (October 23, 1991). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 CFR §§ 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to United States Citizenship and Immigration Services (“USCIS”) based on a Memorandum of Understanding, which was recently rescinded. See 72 Fed. Reg. 27904 (May 17, 2007) (codified at 20 C.F.R. § 656). DOL’s final rule became effective July 16, 2007 and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. As the filing of the instant case predates the rule, substitution will be allowed for the present petition.

During the adjudication of the appeal, evidence has come to light that the petitioning business in this matter: Accru Fashion, Inc. has been dissolved. *See* attached print-out from the California Department of State, California Business Portal official website which indicates that Accru Fashion, Inc. was dissolved (on August 22, 2008 – obtained by phone). If the petitioning business is no longer an active business, the petition and its appeal to this office have become moot. In which case, the appeal shall be dismissed as moot.

The petitioner was allotted thirty days to respond to the NDI. However, on July 10, 2009, the NDI was returned to the AAO as “Return to Sender, Attempted – Not Known, Unable to Forward.” Counsel for the petitioner was also sent a copy of the NDI.

Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. A labor certification must be for full-time employment. *See* 20 C.F.R. § 656.3. A labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(C)(2).

As there has been no response from the petitioner or counsel to the NDI, the AAO must presume that the petitioner has, in fact, been dissolved and that the appeal is, therefore, moot.

ORDER: The appeal is dismissed as moot based on the finding that the petitioner has been dissolved.