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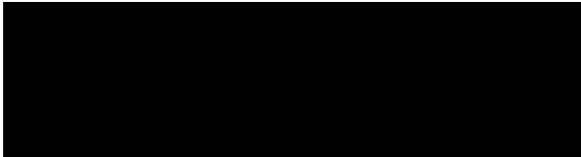
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

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JAN 21 2010

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 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.

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner purports to be a wholesale clothing business. It seeks to employ the beneficiary permanently in the United States as an analyst programmer. As required by statute, the petition is accompanied by an ETA Form 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). 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 accordingly.

In this matter, the petitioner is identified as [REDACTED] (DBA: [REDACTED]). The petitioner is a California corporation and lists its IRS tax number in the petition as [REDACTED]. [REDACTED] is the employer listed in the labor certification. The record also contains business records pertaining to [REDACTED], a separate California corporation having an IRS tax number of [REDACTED]. Finally, the record contains evidence that [REDACTED] has registered a fictitious name "[REDACTED]" with the County of Los Angeles, California. However, as J-R [REDACTED] and [REDACTED] are both corporations having unique tax identification numbers, it appears more likely than not that the petitioner in this matter is [REDACTED] and not [REDACTED], [REDACTED] even though [REDACTED] apparently transacts business using a name similar to the petitioner.

The Form I-290B appellate form in this matter was filed for [REDACTED] (formerly [REDACTED]) U.S. Citizenship and Immigration Services' (USCIS) regulations specifically authorize only "affected parties" to file appeals. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

Meaning of "affected party." For purposes of this section and Sec. 103.4 and 103.5 of this part, "affected party" (in addition to [USCIS]) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

As noted above, the petitioner is [REDACTED], [REDACTED]. Andrewdavid, Inc. is a separate corporation with its own EIN [REDACTED] and is not an "affected party." Although Andrewdavid, Inc. is mentioned in the petition, it is clear that it is neither the petitioner nor the employer identified in the labor certification. The record of proceeding is generally devoid of evidence establishing that [REDACTED] is, or has become, an affected party. See generally *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

Accordingly, the appeal is improperly filed by a person or entity not entitled to file it, and the appeal must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(1).¹

ORDER: The appeal is rejected as improperly filed.

¹It is noted that counsel, on appeal, claims that the petitioner and [REDACTED] are “one and the same corporation.” However, this is not consistent with the evidence in the record as noted above. Both are California corporations with unique tax identification numbers. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).