

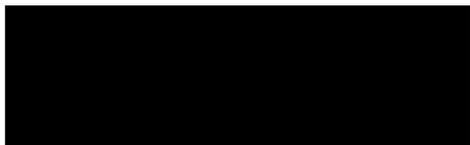
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date:

APR 26 2011

Office:



FILE:



IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as Any Other Worker, Unskilled (requiring less than two years of training or experience), pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, [REDACTED] Service Center, denied the immigrant visa petition. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. The petitioner has filed a motion to reopen the AAO decision. The motion will be dismissed.

The petitioner is a car wash company known as [REDACTED] located in [REDACTED]. It seeks to employ the beneficiary permanently in the United States as a maintenance mechanic under Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii).¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, finding that the petitioner did not have sufficient net income or net current assets to pay the proffered wage from the priority date, specifically in 2005, 2006, and 2007. The AAO agreed.

On motion to reopen, [REDACTED] the sole owner of the petitioning company, indicates that he has the ability to pay the proffered wage of the beneficiary from the priority date. He also states that he has a personal net worth of over \$53 million dollars. Various documents including [REDACTED] individual income tax returns for the years 2006 through 2008 and his financial statements, as compiled and reviewed by his certified public accountant in conformance with the American Institute of Certified Public Accountants, for 2008 and 2009 are submitted as evidence of the petitioner's ability to pay. [REDACTED] also provides copies of the 2008 and 2009 federal tax returns and unaudited financial statements of other business enterprises that he owns.² Previously on appeal, [REDACTED] stated that his companies were closely intertwined with each other.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the motion to reopen does not state any new facts to be proved in the reopened proceeding. As indicated in the AAO's earlier decision, this office cannot use or consider [REDACTED] personal income or current assets or the income or assets of his other business enterprises to

¹ Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

² [REDACTED] other companies include [REDACTED]

demonstrate the petitioner's ability to pay the proffered wage. It is an elementary rule that a corporation, such as the petitioner in the instant case, is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D. Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or other entities who have no legal obligation to pay the wage."

Similarly in this case, since [REDACTED] and his other business enterprises are all distinct and separate legal entities from the petitioner, they have no legal obligation to pay the wage of the beneficiary. Further, no matter how closely intertwined [REDACTED] and his other business enterprises are with each other, they are, as a matter of law, distinct and separate legal entities; and for these reasons, we cannot use or consider any of the evidence submitted.

As the motion to reopen does not state any new facts, the motion must be dismissed.

ORDER: The motion to reopen is dismissed.