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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

**PUBLIC COPY**

[REDACTED]

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DATE: **MAY 12 2011** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

**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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner describes itself as a carpet installation business. It seeks to employ the beneficiary permanently in the United States as a carpet installer in accordance with section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1153(b)(3)(A)(iii). As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). In his decision the Director noted that the company identified on the labor certification application does not match the company name on the immigrant visa petition. After finding that the petitioner had failed to resolve this discrepancy, the director determined that the labor certification was not valid for use by the petitioner in this proceeding. The Director concluded that the petitioner was not in compliance with 8 C.F.R. § 204.5(l)(3)(i), which provides that “[e]very petition under this classification must be accompanied by an individual labor certification from the Department of Labor . . . .”

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. In order to consider it in the proper context, the AAO will review the procedural history since the labor certification application was filed in 2001.

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.

The record shows that the Application for Alien Labor Certification, Form ETA 750, that accompanied the current petition was filed on April 30, 2001 by [REDACTED]. The Form ETA 750 identified the proffered position as a carpet installer, indicated that it did not require any particular education, training, or experience, and stated that the offered wage was \$18.68 per hour for a 40-hour workweek, plus \$27.34 per hour for 5 hours of overtime per week (which amounts to an annual total of \$45,962.80). The application was approved by the Department of Labor (DOL) on February 28, 2003.

With this labor certification, [REDACTED] filed an Immigrant Petition for Alien Worker, Form I-140, with United States Citizenship and Immigration Services (USCIS), Vermont Service Center, on March 15, 2004 (EAC 04 122 51396). Consistent with the labor certification (and section 203(b)(3)(A)(iii) of the Act), the carpet installer was categorized as an “other worker” position requiring less than two years of training or experience. On October 4, 2004, the application was denied by the Vermont Service Center on the ground that the petitioner failed to submit requested evidence to establish its ability to pay the offered wage to the beneficiary. A subsequent motion to reopen was dismissed as untimely filed.

On September 18, 2006, another Form I-140 petition was filed with the Nebraska Service Center [REDACTED] this time identifying [REDACTED] as the petitioner, with the same address as the

previous petitioner [REDACTED] In addition to a different name for the petitioner, the Form I-140 categorized the carpet installer position differently – as a professional (requiring a bachelor’s degree or equivalent) or skilled worker (requiring two years or more of training and/or experience).<sup>1</sup> As evidence of its ability to pay the offered wage, [REDACTED] submitted copies of its federal income tax returns (Form 1120S) for the years 2001-2005, as well as the beneficiary’s Form W-2, Wage and Tax Statements, covering the same years and showing that he had been employed by [REDACTED] as a carpet installer since 2001.<sup>2</sup> On June 26, 2007, the Nebraska Service Center denied the petition – noting that the labor certification indicated the carpet installer position required no education, training, or experience, and declaring that the petitioner could not be found qualified for classification as a skilled worker. No appeal was filed.

On July 26, 2007, the current Form I-140 was filed with the Texas Service Center. The petitioner is once again identified as [REDACTED] In contrast to the previous petition (but like the first petition filed by [REDACTED]) the proffered position is categorized as an “other worker” position requiring less than two years of training or experience. On April 10, 2008, the Director issued a Request for Additional Evidence, specifically requesting:

1. Copies of the petitioner’s 2001-2007 federal income tax returns, certified by the Internal Revenue Service (IRS), for [REDACTED]
2. Documentation such as payroll records, pay receipts, tax returns, or the like which confirms the beneficiary’s employment by previous employer(s).
3. Documentation showing that [REDACTED] – the current petitioner – is the successor-in-interest to Carpet Outlet, the employer identified on the labor certification, or, in the alternative, a DOL-certified labor certification for [REDACTED]

In response to these three request categories, the petitioner submitted the following documentation:

1. -- Copies of the federal income tax returns (Form 1120S) for the years 2006 and 2007 filed by J [REDACTED]

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

<sup>2</sup> On the labor certification (Form ETA 750) the petitioner stated that the beneficiary’s employment began in July 2000.

-- For each of the years 2001-2007: (a) an IRS-certified Form 4340, Certificate of Assessments, Payments and Other Specified Matters [REDACTED] U.S. Corporation Income Tax Return (Form 1120), and (b) IRS Account Transcripts for [REDACTED]

2. Copies of three pay stubs from a previous employer of the beneficiary.

3. -- A statement by [REDACTED], [REDACTED] explaining that [REDACTED] is the company's corporate name, but that it does business as [REDACTED] and [REDACTED]<sup>3</sup>. [REDACTED] submitted two business cards – one of his and one of the beneficiary's – showing their affiliation with the latter business.

-- A Certificate of Liability Insurance from [REDACTED] identifying the insured party as [REDACTED] located at [REDACTED]

-- A [REDACTED] invoice form identifying the company's address as [REDACTED]

On July 15, 2008, the Director issued his decision denying the petition. The Director stated that the tax records submitted by the petitioner related to the parent company located in [REDACTED] rather than [REDACTED]. Furthermore, the Director indicated that the statement by [REDACTED], the two business cards, the insurance certificate, and the invoice form failed to demonstrate that [REDACTED] and [REDACTED] are one in the same business. Since the company names on the labor certification and the immigrant visa petition are not the same, the Director ruled that the Form ETA 750 is not a valid labor certification for [REDACTED] Form I-140 petition.

On appeal, counsel asserts that the Director erred in failing to recognize that [REDACTED] and [REDACTED] are the same company. There was no succession-in-interest from one company to another because there has always been only one company. Therefore, the Form ETA 750 filed and approved in the name of [REDACTED] should be accepted as a valid labor certification for the Form I-140 petition filed by [REDACTED]. The AAO does not agree.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>3</sup> The business is identified inconsistently in the documentation of record as [REDACTED] [REDACTED]. For the sake of uniformity in this Decision, the AAO will use [REDACTED] – the name appearing on the labor certification, Form ETA 750.

The documentation of record is murky with regard to the petitioner's business content, organization, and location. The corporate income tax forms for the years 2001-2007 (Form 1120S) identify the company as [REDACTED] with an address in [REDACTED], and then in [REDACTED]. The tax forms describe the business of [REDACTED] as a wholesale distributor of blinds (without mentioning any carpet business). Consistent with this business description, the IRS Account Transcripts identify the company as [REDACTED]. But the company's address is identified as located in [REDACTED].

The wage and tax statements (Form W-2) of [REDACTED] for the years 2001-2005 identify his employer as [REDACTED]. All [REDACTED] with an address in [REDACTED]. The Form W-2s do not refer to any carpet outlet employer in [REDACTED] though the personal address of [REDACTED] during these years, as identified on the W-2s, was in [REDACTED] (three different locations). The petitioner has not explained why, if [REDACTED] has been employed as a carpet installer in [REDACTED] his Form W-2s identify his line of work as venetian blinds manufacturing in [REDACTED].

The two business cards in the record do connect [REDACTED] and [REDACTED] to a carpet outlet business located at [REDACTED]. The invoice form also identifies a carpet business at that address. But none of these items indicates that the carpet business is associated with [REDACTED]. The only document in the record that does offer such a link is the Certificate of Liability Insurance, which identifies the insured party in somewhat garbled language as [REDACTED].

Importantly, the record is devoid of evidence that the petitioner has ever filed the paperwork required by the [REDACTED] to register [REDACTED] (or any of the other name variations) as a fictitious name. See Massachusetts General Laws, Title XV, Chapter 110, Section 5 (Certificates of persons conducting business).<sup>4</sup> If the petitioner were truly doing business as "Carpet Outlet," it is reasonable to presume that it would operate in accordance with state law.

<sup>4</sup> The state statute reads as follows:

Any person conducting business in the commonwealth under any title other than the real name of the person conducting the business, whether individually or as a partnership, shall file in the office of the clerk of every city or town where an office of any such person or partnership may be situated a certificate stating the full name and residence of each person conducting such business, the place, including street and number, where, and the title under which, it is conducted, and pay the fee as provided by clause (20) of section thirty-four of chapter two hundred and sixty-two. Such certificate shall be executed under oath by each person whose name appears therein as conducting such business and shall be signed by each such person in the presence of the city or town clerk or a person designated by him or in the presence of a person authorized to take oaths. The city or town clerk may request the person filing such certificate to produce evidence of his identity and, if such person does not, upon such request, produce evidence thereof satisfactory to such clerk, the clerk shall enter a

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

In view of the myriad evidentiary inconsistencies discussed above, which have not been resolved by the petitioner, the AAO concludes that the record fails to establish that [REDACTED] and [REDACTED] are the same business entity. Thus, the labor certification issued to [REDACTED] is not valid for use by [REDACTED] in the current immigrant visa petition. In accord with the Director's decision, therefore, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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notation of that fact on the face of the certificate. A person who has filed such a certificate shall, upon his discontinuing, retiring or withdrawing from such business or partnership, or in the case of a change of residence of such person or of the location where the business is conducted, file in the office of said clerk a statement under oath that he has discontinued, retired or withdrawn from such business or partnership or of such change of his residence or change of the location of such business, and pay the fee required by clause (21) of said section thirty-four. In the case of death of such a person, such statement may be filed by the executor or administrator of his estate. The clerk shall keep a suitable index of all certificates so filed with him which are currently in force and effect, setting forth the pertinent facts, including a reference to any statement of discontinuance, retirement or withdrawal from, or change of location of, such business, or change of residence of such person. A certificate issued in accordance with this section shall be in force and effect for four years from the date of issue and shall be renewed each four years thereafter so long as such business shall be conducted and shall lapse and be void unless so renewed. Copies of such certificates shall be available at the address at which such business is conducted and shall be furnished on request during regular business hours, to any person who has purchased goods or services from such business. Violations of this section shall be punished by a fine of not more than three hundred dollars for each month during which such violation continues.