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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

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DATE: **MAR 01 2012** OFFICE: TEXAS SERVICE CENTER

FILE:

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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the amended employment-based immigrant visa petition and dismissed the subsequent motion to reopen and reconsider the denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an IT staffing and services company. It seeks to permanently employ the beneficiary in the United States as a Systems Analyst. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).² The priority date of the petition is June 7, 2002, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

At issue in this case is whether the petitioner is a successor-in-interest to [REDACTED] the entity that filed the labor certification and original petition on behalf of the beneficiary.

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.³

As with all immigrant visa petitions requiring a certified labor certification, the history of this case involves both the DOL and U.S. Citizenship and Immigration Services (USCIS). The labor certification underlying the instant petition was filed with the DOL by the beneficiary's original

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² This petition involves the substitution of the labor certification beneficiary. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the labor certification, the requested substitution will be permitted.

³ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

employer, [REDACTED]. At the time, [REDACTED] was a publicly traded IT services company headquartered in Mountain Lakes, New Jersey. The DOL certified the Form ETA 750 on December 19, 2005.

On October 4, 2006, [REDACTED] filed a petition on behalf of the instant beneficiary, requesting a substitution of the beneficiary of the labor certification [REDACTED]. The director approved the petition on July 27, 2007.

On May 18, 2007, the petitioner submitted an amended I-140 petition, explaining in an accompanying letter that it had “acquired the assets of the commercial services division [of [REDACTED], including [its] workforce and related immigration liabilities.”

The director denied the amended petition on February 27, 2008. Citing *Matter of [REDACTED]*, [REDACTED] 19 I&N Dec. 481 (Comm’r 1986), the director concluded that that the petitioner is not a successor-in-interest to [REDACTED] because it did not assume “all of the obligations, liabilities, rights and assets of the original business.”

The petitioner filed a motion to reopen and reconsider the director’s decision on March 21, 2008. The motion argues that the director erroneously interpreted [REDACTED] as requiring a successor-in-interest to acquire all of a predecessor’s assets, right and liabilities; and that the director failed to follow USCIS policy guidance regarding the adjudication of successor-in-interest cases. The director dismissed the motion on June 27, 2008. The petitioner appealed the director’s decision to the AAO on July 25, 2008.

Upon review, the AAO concludes that the evidence submitted on appeal establishes that the petitioner acquired a division of [REDACTED] and met the requirements to be a successor-in-interest. The fact that the petitioner did not assume all of the predecessor company’s rights, duties, and obligations does not preclude it from being a successor-in-interest under [REDACTED].

The petitioner has established that it is more likely than not the successor-in-interest to the beneficiary’s original employer; accordingly, the labor certification remains valid for this petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.