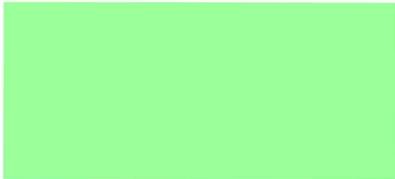


(b)(6)

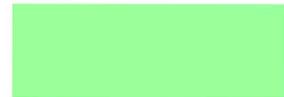
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **SEP 28 2012** Office: TEXAS SERVICE CENTER



IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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,

*Kerry Rhew for*

Perry Rhew  
Chief, Administrative Appeals Office

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

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

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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.

The petitioner is a farm. It seeks to employ the beneficiary permanently in the United States as a butcher. 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 employer on the labor certification is [REDACTED]. Then labor certification was filed on June 22, 2004, and DOL certified the labor certification on December 11, 2007. The petitioner, [REDACTED] filed the Form I-140 petition accompanied by the labor certification on May 6, 2008. The Director issued a request for evidence on January 15, 2009, requesting evidence of the petitioner's ability to pay the proffered wage and evidence of the beneficiary's work experience. The petitioner responded on February 17, 2009 by submitting a copy of a document signed by [REDACTED] on February 12, 2009 in his capacity as Vice President of [REDACTED] and former Vice President of the petitioner, which states:

Please be advised that [REDACTED] took over [the petitioner] in November 2003. All of [the petitioner's] employees, equipment, land, office and workspaces, clients and customers were absorbed by [REDACTED]. With the takeover, all of [the petitioner's] assets were fully and unconditionally assumed by [REDACTED]. [The petitioner's] former corporate officers and owners are now the corporate officers and owners of [REDACTED].

The director denied the petition stating the petitioner had not established a successorship-in-interest occurred. On appeal, counsel asserts that [REDACTED] is the successor-in-interest to the petitioner.

According to the evidence in the record, the petitioner, a New York corporation, sold substantially all of its assets to [REDACTED] a Delaware limited liability company, pursuant to an Asset Purchase Agreement dated May 19, 2000. It is not clear whether [REDACTED] obtained the right to use the name "[REDACTED]" in that transaction. While the petitioner remained an active corporation in New York until January 28, 2009, when it was dissolved,<sup>1</sup> it is not clear from the record whether the petitioner had any assets or transacted any business after 2000.<sup>2</sup>

<sup>1</sup> [REDACTED] was dissolved in the State of New York on January 28, 2009. *See*

[REDACTED] a New York limited liability company, was organized on February 6, 2004. Pursuant to an Asset Purchase Agreement dated March 8, 2004, [REDACTED] purchased certain assets and assumed certain liabilities of [REDACTED]. Therefore, [REDACTED] has not established that it is a successor-in-interest to [REDACTED]. It did not purchase any assets or rights from [REDACTED] in 2004; instead, it purchased certain assets and liabilities from [REDACTED] that year.

U.S. Citizenship and Immigration Services (USCIS) regulations and precedent decisions specifically limit the filing of an appeal to the affected party, i.e., in the instant case, the petitioner. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B). The petitioner in this case is [REDACTED]. The appeal was filed and signed by counsel on behalf of [REDACTED] aka [REDACTED]. On appeal, counsel states that all of [REDACTED] employees, equipment, land, office and workspaces, clients and customers, now belong to [REDACTED]. However, as set forth above, the record does not establish that [REDACTED] is a successor-in-interest to [REDACTED] or that [REDACTED] was authorized to transact business under the fictitious name ' [REDACTED] aka [REDACTED] '. As [REDACTED] is not a recognized party in this matter, [REDACTED] is not authorized to file the appeal in this matter. 8 C.F.R. § 205.2(d); 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1). Thus, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>2</sup> The petitioner does not appear to be a United States employer intending and desiring to employ the beneficiary. Only a United States employer intending and desiring to employ the beneficiary may file a Form I-140 seeking classification under section 203(b)(3) of the Act. *See* 8 C.F.R. § 204.5(c).

<sup>3</sup> The Form G-28 dated March 10, 2009 and submitted on appeal was signed by [REDACTED] in his capacity as Vice President of " [REDACTED] aka [REDACTED] ". In contrast, the Form G-28 dated January 8, 2008 and submitted with the petition was signed by [REDACTED] in his capacity as President of [REDACTED].