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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: **SEP 04 2012** OFFICE: NEBRASKA 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant 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 summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a professional or skilled worker. The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date, and that the petitioner was no longer in business.

On appeal, new counsel submitted a Form I-290B, stating that a new corporation was formed that was the successor-in-interest to the petitioner (appellant), and that the petitioner and appellant have the ability to pay the proffered wage. No additional evidence or brief was attached to that form.

Counsel dated the appeal August 19, 2009. On September 18, 2009, counsel requested an additional thirty days to submit a brief in support of appeal. As of this date, three years later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

Beyond the decision of the director,¹ even if the appeal were not summarily dismissed, the appeal would be dismissed on the merits as the appellant has not established with independent evidence that it is indeed a successor-in-interest to the petitioner. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the appellant is a different entity than the petitioner/labor certification employer, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

An appellant may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).



The appellant did not provide any evidence in the record, and failed to satisfy all three conditions described above. Accordingly, the petition must also be denied because the appellant has failed to establish that it is a successor-in-interest to the petitioner/labor certification employer.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.