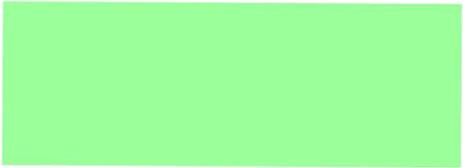
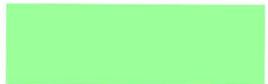


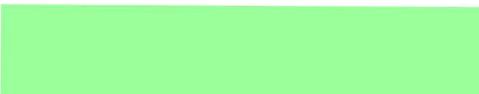
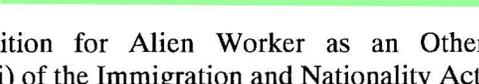


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 10 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting 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 petitioner¹ 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 skilled worker. The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date, that the petitioner had not established that the beneficiary satisfied the minimum qualifications of the offered position, as set forth on the underlying Form ETA 750, Application for Alien Employment Certification (labor certification), and that the labor certification did not support the category selected on the Form I-140, Immigration Petition for Alien Worker.

On appeal, counsel states only that the director's decision "misconstrued evidence" in this case, and protests the long delay in adjudication of the petition and the denial of petitioner's request for an extension of time to submit a response to the director's Request for Evidence (RFE) issued by the United States Citizenship and Immigration Services (USCIS) in this case. Counsel checked box B on Part B of the Form I-290B, Notice of Appeal or Motion, dated January 10, 2013, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days of the appeal. As of this date, nearly six months 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.

¹ As noted in the USCIS RFE and denial, the petitioner's name on the Form I-140, Petition for Alien Worker, is different from the employer on the underlying labor certification, [REDACTED] which also appears to have a different tax identification number. A search of the California Secretary of State's website revealed the petitioning entity has been active since June 5, 2003, which is *after* the priority date in this case. See <http://kepler.sos.ca.gov/> (last accessed June 5, 2013). A similar search of the name [REDACTED] yielded no results. 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. In any future filings, the petitioner must show that all three conditions described above have been satisfied to demonstrate that the job opportunity is still valid.

Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The director clearly noted that the petitioner failed to submit any tax returns, audited financial statements, or annual reports for 2001 to 2010 pursuant to 8 C.F.R. § 204.5(g)(2). However, on appeal, counsel has not even expressed disagreement with the director's decision, rendered based on the record before the director. In the Form I-290B, Notice of Appeal, counsel contests only USCIS' denial of his October 18, 2012 extension of time to file a response to an RFE issued on July 20, 2012. The AAO observes, however, that, in addition to the three months provided in the RFE, counsel did not submit the requested evidence during the two months prior to the director's final decision, with his Form I-1290B, Notice of Appeal, filed one month after the decision was issued, or in the six month period thereafter. Thus, the petitioner had multiple opportunities to resolve the issues of eligibility identified in the RFE and the director's decision, but failed to do so. Counsel failed to submit any evidence on appeal, including the identified missing financial documentation from 2001 to 2010 required pursuant to 8 C.F.R. § 204.5(g)(2). Additionally, counsel failed to address the other outlined deficiencies related to the beneficiary's experience, and likewise, did not address the fact that the labor certification does not support the "other worker" category selected on the Form I-140, as noted in the director's decision. Moreover, counsel failed to specifically state or identify what, if any errors, the director made in the decision denying the petition in this case based on the record at the time. The appeal must therefore be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is dismissed.