



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C3A-, LLC

DATE: OCT. 26. 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a mixed martial arts academy, seeks to classify the Beneficiary as an artist or entertainer coming to the United States to perform under a culturally unique program. *See* Immigration and Nationality Act (the Act) §101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 19, 2014. The Petitioner seeks to extend the Beneficiary's P-3 status so that it may continue to employ the Beneficiary as a Brazilian Jiu-Jitsu instructor at the Petitioner's academy for a period of one year. The Director denied the petition on October 9, 2014, finding that the Petitioner did not establish that the Beneficiary performs as an artist or entertainer and seeks to enter the United States to perform, teach or coach as a culturally unique artist or entertainer at a culturally unique event or events.

On appeal, an issue arose as to whether the Petitioner qualifies as a U.S. employer for purposes of employing a nonimmigrant worker. We conduct appellate review on a *de novo* basis. Our *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Pursuant to 8 C.F.R. § 214.2(p)(2)(i), a P-3 petition for an artist or entertainer in a culturally unique program shall be filed by a United States employer or sponsoring organization. On July 8, 2015, we sent a notice of derogatory information and intent to dismiss, noting that according to the records of the Connecticut Secretary of State Commercial Recording Division, the Petitioner was voluntarily dissolved effective [REDACTED] and requesting information such as a certificate of good standing or other proof that the Petitioner is in active status. We also advised the Petitioner that a company that has been dissolved cannot qualify as a U.S. employer for purposes of employing a nonimmigrant worker.

In its response, the Petitioner confirms that it "went out of business" on [REDACTED] but affirms that a "new owner now has control over the company and has chosen to continue to operate it in the same fashion." The Petitioner asserts that "there is a valid successor-in-interest relationship which requires the employment of the Beneficiary, and, as such, the underlying Petition is not moot." The Petitioner relies on the standards put forth in a policy memorandum providing guidance on successor-in-interest issues in the Form I-140 context, USCIS Policy Memorandum AD09-37, *Successor-in-Interest Determination of Form I-140 Petitions*; *Adjudicators Field Manual (AFM)*

(b)(6)

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Update to Chapter 22.2(b)(5) (August 6, 2009), <http://www.uscis.gov/sites/default/files/USCIS/Laws%20and%20Regulations/Memoranda/2009%20Memos%20By%20Month/August%202009/Successor-in-Interest-8-6-09.pdf>. However, as the Petitioner acknowledges, the guidance contained in that memorandum “does not apply in the P-3 context.” Regardless, the Petitioner does not identify its new owner nor “document the transfer and assumption of the ownership of the predecessor by the successor” as required on page 4 of the memorandum. Rather, the Petitioner provided the Petitioner’s recent Facebook pages, which also reference the [REDACTED]. These pages do not document the transfer of a predecessor entity to a successor.

Further, the Petitioner requests that “[i]f the AAO finds that continued operation of [the Petitioner] does not constitute a successor-in-interest, then, in the alternative, we request that the AAO review and approve the Petition for the period of June 19, 2014 through March 31, 2015,” stating that “[w]ithout this approval, the Beneficiary could be considered to have accrued more than 365 days of unlawful presence.” An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the Beneficiary’s maintenance of status is an extension issue, rather than a petition issue, we lack authority to decide the question of the extension dates. Moreover, the Petitioner has not cited any legal authority for the proposition that USCIS may approve a petition where the Petitioner is no longer a U.S. employer solely for the purpose of granting an extension of stay up to the point where the Petitioner dissolved. Notably, the regulation at 8 C.F.R. § 214.2(p)(10)(ii) provides for the automatic revocation of an approved petition if the Petitioner goes out of business. The Petitioner has not explained how we could approve a petition that would be subject to automatic revocation.

The Petitioner does not assert that it has been reinstated as of this date, and we confirmed that it has not. See Connecticut Secretary of State Commercial Recording Division, [REDACTED] (accessed on October 8, 2015, and incorporated into the record of proceedings.) As the Petitioner was dissolved effective [REDACTED], it cannot qualify as a U.S. employer for purposes of employing the Beneficiary. Accordingly, the appeal will be dismissed.

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C3A-, LLC*, ID# 12000 (AAO Oct. 26, 2015)