



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

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

In Re: 11244060

Date: JUL. 7, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

Before its corporate dissolution, the Petitioner, a clothing manufacturer, sought to employ the Beneficiary as a patternmaker. The company requested his classification under the third-preference, immigrant visa category as a skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After first granting the filing, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that, on the accompanying certification from the U.S. Department of Labor, the Petitioner willfully concealed a family relationship between a co-owner of the company and the Beneficiary. On appeal, the Petitioner contends that its other co-owner, who purportedly operated the business and recruited the Beneficiary, did not know of the family relationship.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also* *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we find that the record does not demonstrate the Petitioner's submission of the appeal. We must therefore reject the submission.

I. LAW

Appeals of denials, dismissals, or revocations must be filed by affected parties. 8 C.F.R. § 103.3(a)(2)(i). In petition proceedings, the term "affected party" generally means the petitioner. 8 C.F.R. § 103.3(a)(iii)(B). We must reject an appeal submitted by a person or entity who is not entitled to file it. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

II. ANALYSIS

In February 2020, we received the appeal in the Petitioner's name. The Form I-290B, Notice of Appeal or Motion, indicates that a former president of the company signed the submission.

In response to the Director's notice of intent to revoke the petition, the Petitioner had provided a copy of a dissolution certificate that the company filed with California authorities. The certificate indicates

that all the company's shareholders voted to dissolve the California corporation in June 2017. *See also* Cal. Sec'y of State, bizfile Online, "Business Search," <https://bizfileonline.sos.ca.gov/search/business>.

Upon the filing of a certificate of dissolution, "the corporate powers, rights, and privileges of the corporation shall cease." Cal. Corp. Code § 1905(b). Once dissolved, a California corporation has no authority to "reinstate" its corporate status. *Catalina Invs., Inc. v. Jones*, 119 Cal.Rptr.2d 256 (2002). Rather, except to engage in activities needed for the business's "winding up," a California corporation ceases to exist upon its dissolution. *Id.* Thus, receiving the appeal more than two years after the Petitioner's dissolution, we doubted the company's claimed submission of the appeal. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

Also, the appeal's purported signatory is not the Petitioner's most recent president. Online California filings and a 2018 affidavit from the purported signatory indicate that another person replaced him as the company's president in September 2016. *See* Cal. Sec'y of State, bizfile Online, "Business Search," *supra*. The purported signature from the past president also casts doubt on the Petitioner's claimed submission of the appeal. *See Matter of Ho*, 19 I&N Dec. at 591.

Because of these inconsistencies, we issued a notice of intent to reject the appeal in September 2021. We mailed copies of the notice to both the appeal's purported signatory and the Petitioner's counsel of record. The notice asked the company to explain and document its post-dissolution existence at the time of the appeal's filing.

The U.S. Postal Service returned the copy addressed to the Petitioner's former president as "undeliverable." Counsel responded to our other copy. But, contrary to our request, counsel did not explain or document the Petitioner's existence at the time of the appeal's filing. Rather, he stated his representation of the Petitioner and another company that claims to be the Petitioner's successor-in-interest.

A successor-in-interest is an entity that acquired the assets and liabilities needed to continue operating a prior business or a discrete part of it. For immigration purposes, a successor may use a Form I-140 petition and accompanying labor certification of its predecessor if the successor: 1) fully explains and documents the transactions by which it acquired the predecessor's business; 2) establishes that, but for the change of employer, the job opportunity remains the same; and 3) demonstrates eligibility for petition approval in all respects, including the ability of the successor and predecessor to have continuously paid the proffered wage of the offered position from the petition's priority date. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986).

We need not determine whether the other company is the Petitioner's successor-in-interest. Even if it is, the appeal does not indicate its submission by the purported successor, and the company does not claim to have submitted the appeal. Rather, as previously discussed, the appeal indicates its submission by the Petitioner. The record does not explain why the Petitioner would have submitted the appeal if the purported successor had previously acquired its business. Also, neither the Petitioner nor its purported successor have explained or documented the Petitioner's existence at the time of the appeal's submission.

III. CONCLUSION

The record does not establish the Petitioner's submission of the appeal. Because an unentitled person or entity may have submitted the appeal, we must reject it as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.