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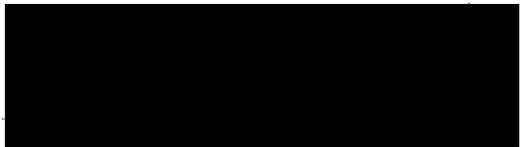
U.S. Department of Homeland Security

Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 2<sup>nd</sup> Mass, 3/F  
251 Street, N.W.  
Washington, DC 20535

APR 05 2004



File: LIN 02 098 50884 Office: NEBRASKA SERVICE CENTER

Date:

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: SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a "REHAB SERVICES/STAFFING" company. It seeks to employ the beneficiary permanently in the United States as a physical therapist. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director determined that the notice of filing the Application for Alien Certification was not provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(1).

On appeal, the petitioner submits additional evidence.

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.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a skilled worker (physical therapist). Aliens who will be employed as physical therapists are listed on Schedule A. Schedule A is a list of occupations set forth at 20 C.F.R. § 656.10. The Director of the United States Employment Service has determined that an insufficient number of United States workers are able, willing, qualified and available to fill the positions available in those occupations and that the employment of aliens in those occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA 750 at Part A) in duplicate with the appropriate Bureau of Citizenship and Immigration Services office. The Application for Alien Employment Certification shall include:

1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.
2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(1).

20 C.F.R. § 656.20(g)(1) states, in pertinent part:

In applications filed under §§ 656.21 (Basic Process), 656.21a (Special Handling) and 656.22 (Schedule A), the employer shall document that notice of the filing of the Application for Alien Employment Certification was provided:

(i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment.

(ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility of location of the employment.

The Form I-140 petition in this case was filed on January 30, 2002. In Part 6 of the petition, in response to "Address where the person will work if different from (the petitioner's own address)" the petitioner entered "Indiana."

With the petition the petitioner submitted a Notice of Job Availability, on the petitioner's letterhead, dated January 28, 2002. The notice states that it was posted at the company's bulletin board from January 7, 2002 through January 18, 2002. The letterhead gives the petitioner's address as 3125 South Pickwick Place, Springfield, Missouri. The notice also states that the petitioner's physical therapists are not represented by a bargaining representative.

On September 20, 2002, the Director, Nebraska Service Center, issued a decision in this matter. The director noted that the Notice of Job Availability stated that it had been posted at the petitioner's company bulletin board, and that the petitioner's letterhead states that the petitioner's place of business is at 3125 South Pickwick Place in Springfield, Missouri. The director further noted that the petition states that the beneficiary will be employed in Indiana. The director found that the evidence did not establish that the petitioner had posted the Notice of Job Availability in the proposed place of employment in compliance with 20 C.F.R. § 656.20(g)(1) and denied the petition.

On appeal, the petitioner submits a copy of a "Notice of Job Availability in the State of Indiana." That notice states that it was posted on September 26, 2002 and removed on October 9, 2002. A letter on the petitioner's letterhead, dated October 11, 2002, was submitted with that notice. The letter states that the notice was posted at the location of the proposed employment, but does not specify where in the state of Indiana that location is.

The only description of the location of the proposed employment is "Indiana," as was stated on the Form I-140 petition. The petitioner states that the notice was posted at the place of employment, but does not specifically state where in the state of Indiana it was posted.

This office need not reach the issue of the location of the proposed employment or whether the amended notice was posted there.

The original Notice of Job Availability, submitted with the petition, indicated that it had been posted at the petitioner's Missouri place of business, notwithstanding that the proposed employment would be in Indiana. That Notice of Job Availability does not render the petition approvable. This office must further consider the amended Notice of Job Availability.

8 C.F.R. § 103.2(b)(12) states, in pertinent part:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. (Emphasis supplied).

The regulations require that the notice be posted for at least ten consecutive days and evidence of such posting be submitted with the Application for Alien Employment Certification. As the amended Notice of Job Availability was posted subsequent to the filing of the Application for Alien Employment Certification and Form I-140, it does not render the petition approvable.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.