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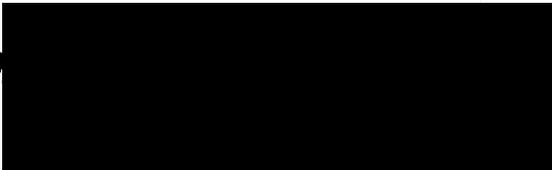
APR 21 2005

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 03 244 50364

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

This is the decision of the Administrative Appeals Office 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.


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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a nonprofit hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner has petitioned for blanket labor certification of the beneficiary pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director determined, however, that the petitioner had not given timely notice of filing the Application for Alien Certification to the employer's employees as prescribed in 20 C.F.R. § 656.20(g).

On appeal, counsel did not submit a brief after checking the box on Form I-290B indicating he intended to do so in the next 30 days. Counsel did, however, submit additional evidence.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 (registered nurse). Aliens who will be employed as nurses are listed on Schedule A as among a list of occupations found 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 such 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).

In this case, Form I-140 was filed on August 12, 2003. On October 2, 2003, the director requested that the petitioner submit evidence that the petitioner has the ability to pay and that the petitioner posted a notice of the position in accordance with 20 C.F.R. § 656.20(g).

In response, the petitioner submitted:

- An October 14, 2003 attestation of the petitioner posting notice, on the petitioner's letterhead, between September 12, 2003 to October 13, 2003, of its having filed the application for alien employment certification addressed to the employer's employees as prescribed in 20 C.F.R. § 656.20(g).
- A letter dated October 14, 2003, in which the petitioner avers its nonprofit status and to which it attached an unaudited balance sheet for the previous two fiscal years.

On December 16, 2003, the director denied the petition because the record indicated that the petitioner had failed to provide evidence of posting a notice of job offer and an application for labor certification for 10 days prior to filing the Form I-140 petition.

On appeal, counsel submits an attestation of a timely posting of the job offer – from June 2, 2003 to June 27, 2003 – which contradicts the petitioner's earlier attestation that it posted from September 12, 2003 to October 13, 2003, a job offer and labor certification notice.

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).

Because the petitioner has submitted two mutually contradictory proofs of when it posted the job offer and labor certification, it raises doubts about the petitioner's case in general. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

Matter of Ho, at 591-592, further states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

Regardless of the contradictory evidence of posting, the petitioner's offer of additional evidence on appeal, after being previously put on notice of a deficiency in the evidence, and having been given an opportunity to respond to that deficiency, this office will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Under

the circumstances, this office we need not and does not comment on the sufficiency of the evidence offered on appeal.

Accordingly, the regulations require that the notice be posted for at least ten consecutive days and that the evidence of such posting be submitted with the Application for Alien Employment Certification. It is not clear that the job offer notice was posted prior to the filing of the Application for Alien Employment Certification and Form I-140. In fact, there is a statement in the record that the posting requirement was met after the initial filing. The petitioner has not complied with the instructions stipulated in the regulations. Consequently, the petition may not be approved.

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.