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U.S. Citizenship
and Immigration
Services



B/E

NOV 03 2005

FILE: LIN 04 084 50635 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 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 sustained.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a health care facility. It seeks to employ the beneficiary permanently in the United States as a staff nurse. The petitioner asserts that the beneficiary qualifies for a blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The petitioner submitted the Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140). The director denied the petition after determining that the petitioner had not provided evidence that the notice of filing was provided to the bargaining representative or posted according to the regulations at 20 C.F.R. § 626.20(g)(1).

On appeal, the petitioner submits 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 filed an Immigrant Petition for Alien Worker (Form I-140) for classification of the beneficiary under section 203(b)(3)(A)(i) of the Act as a staff nurse on February 3, 2004. Aliens who will be permanently employed as professional nurses are listed on Schedule A as occupations set forth at 20 C.F.R. § 656.10 for which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed. Also, according to 20 C.F.R. § 656.10, aliens who will be permanently employed as professional nurses must have (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or (2) hold a full and unrestricted license to practice professional nursing in the state of intended employment.

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 Citizenship and Immigration Services (CIS) office. Pursuant to 20 C.F.R. § 656.22, 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)(3).

With the initial petition, the petitioner provided a posting notice dated September 29, 2003, requesting interested applicants to apply with the recruitment coordinator, Resurrection Health Care, at [REDACTED]

██████████ Chicago, IL 60634. Because the director considered the evidence insufficient to adjudicate the petition, the director issued a request for evidence on March 19, 2004 requesting the petitioner's posting notice pursuant to 20 C.F.R. § 656.20(g)(1), and proof of the beneficiary's passage of the CGFNS examination or an unrestricted license to practice nursing in the state of intended employment pursuant to 20 C.F.R. § 656.10. In response, counsel submitted a copy of the beneficiary's CGFNS certificate dated January 8, 2004, and another copy of the posting notice.

The director denied the petition on May 27, 2004 for failure to provide evidence that the notice of filing was provided to the bargaining representative or posted according to the regulations at 20 C.F.R. § 626.20(g)(3).

On appeal, the petitioner submits another posting notice dated May 1, 2004 and a letter stating that the job notice has been, and continues to be posted at the actual work site since January 1, 2004.

Under 20 C.F.R. § 656.20, the regulations require the following:

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 or location of the employment. The notice shall be posted for at least 10 consecutive days. The notice shall be clearly visible and unobstructed while posted and shall be posted in conspicuous places, where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

The director was mistaken in his decision which stated that "the notice informs prospective employees to apply to the Local State Employment Service or Regional Certifying Officer, U.S. Department of Labor." The original posting notice, dated September 29, 2003, informs applicants to apply to the recruitment coordinator at Resurrection Health Care and informs applicants that they may provide documentation bearing on the application to the local State Employment Service or Regional Certifying Officer. In addition, the posting specifically states that the notice is being posted for the duration. Therefore, there is no reason to assume that the letter attesting to the posting being placed in all Resurrection Health Care facilities, including where the beneficiary will be employed, since January 1, 2004 is suspect.

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As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.