



U.S. Citizenship  
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FILE: LIN 03 184 50730 Office: NEBRASKA SERVICE CENTER Date: SEP 15 2005

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

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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 employment based immigrant 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 rejected.

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 an auto repair business. It seeks to employ the beneficiary as an automobile body repair-person. The petition was accompanied by a copy of a certification from the Department of Labor. (It is noted that the petitioner stated that the original labor certification was in another file that was being held by CIS. However, the receipt number provided by the petitioner to identify the file containing the original labor certification is the instant petition's receipt number. It is also noted that subsequent to the petitioner's appeal, the director has obtained the other file mentioned by the petitioner, [REDACTED]. The director denied the petition because he determined that the petitioner had not submitted the original labor certification as required.

The regulation at 8 C.F.R. § 204.5 (l)(3) states in pertinent part:

*Initial evidence –(i) Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. . .

The regulation at 8 C.F.R. § 102.2(b)(4) states:

*Submitting copies of documents.* Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP-66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the Service.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1(2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.).

Since the petition is not supported by an original labor certification from the Department of Labor, this office lacks jurisdiction to consider an appeal from the director's decision. Therefore, the appeal must be rejected. However, the AAO is returning the file to the director who has the discretion to reopen his decision on service motion and adjudicate the petition on its merits.

LIN 03 184 50730

Page 3

**ORDER:**      The appeal is rejected.