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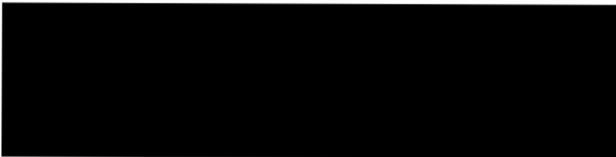
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 002 52326 Office: CALIFORNIA SERVICE CENTER Date: **APR 25 2006**

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:



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, Chief
Administrative Appeals Office

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

The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. 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 evidence submitted does not demonstrate that notice of filing the Application for Alien Certification complied with the posting requirements of 20 C.F.R. § 656.20(g)(3).

On appeal, counsel submits a statement and 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 registered nurses are listed on Schedule A. Schedule A is 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.

The regulation at 20 C.F.R. 656.20(g)(1) states,

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 regulation at 656.20(g)(3) states,

Any notice of the filing of an Application for Alien Employment Certification shall:

(i) state that applicants should report to the employer, not to the local Employment Service office;

(ii) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity; and

(iii) State that any person may provide documentary evidence bearing on the application to the local Employment Service Office and/or the regional Certifying Officer of the Department of Labor.

The regulation at 656.20(g)(8) states:

If an application is filed under the Schedule A procedures at § 656.22 of this part, the notice shall contain a description of the job and rate of pay, and the requirements of paragraphs (g)(3) (ii) and (iii) of this section.

In this case, Form I-140 was filed on October 1, 2003. With the petition counsel submitted a “Notice of Filing Application(s) for Labor Certification.” That notice did not state where it was posted, or when, or when it was removed. The only description of the proffered position or the necessary qualifications is “Licensed Registered Nurse.” (sic) The only point-of-contact given is “Human Resources.”

On October 20, 2004, the Director, California Service Center, denied the petition, finding that the evidence does not demonstrate that the notice was posted the requisite ten days or show where the notice was posted.¹

On appeal counsel stated that the posting notices “. . . were posted in plain view at the Hospital where the position was going to be filled.”

Counsel submitted no evidence in support of his assertion pertinent to the posting of the proffered position, nor even stated the basis of his asserted knowledge of the posting.

The assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel’s assertion is insufficient to demonstrate that the petitioner complied with 20 C.F.R. § 656.20(g)(3).

As the director noted the evidence does not demonstrate the location at which the notice of the proffered position was posted, the date it was posted, or the duration during which it remained posted. The evidence does not,

¹ The director also stated that the point-of-contact, the job description, and the requirements of the proffered position as stated on the posting notice were insufficiently detailed. In view of the other clear deficiencies of the posting notice, this office does not choose to rely upon those other bases for denial. This office does not rule on those other bases.

therefore, demonstrate that the proffered position qualifies for Schedule A handling and the petition was correctly denied on that basis.

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.