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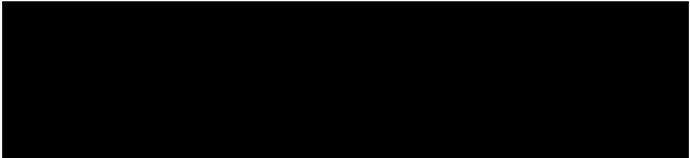
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2006  
WAC-04-063-51747

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 immigrant visa petition was denied by the director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a skilled nursing facility. It seeks to sponsor the beneficiary 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 denied the petition after determining that the posting notice was deficient.

On appeal, counsel submits a brief and new 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 registered nurse on December 31, 2003, the petition's priority date. For visa petitions filed under section 203(b)(3)(A)(i) of the Act, the priority date is the date the Form I-140 Immigrant Petition for Alien Worker is filed with Citizenship and Immigration Services (CIS). 8 C.F.R. § 204.5(d). A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if qualifications are not established at the priority date because of an expectation of eligibility at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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 [s]tate 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 CIS 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)(3).

The only issue in this case is whether or not the record of proceeding contains a posting notice that complies with regulatory requirements. The AAO concurs with the director that the posting notice contained in the record of

proceeding fails to comply with regulatory requirements. 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).

Additionally, 20 C.F.R. § 656.21(g)(3) requires the following:

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 petitioner failed to submit a posting notice with the initial petition. The director requested evidence of the posting notice in a request for evidence dated March 11, 2004. In response, the petitioner submitted a copy of the director's request for evidence with a typed note on it stating that they were submitting "a letter from Ms. [REDACTED] Administrator, certifying that their facility does not have a bargaining representative and a copy of the Notice of Filing." A letter from Ms. [REDACTED] dated March 30, 2004, states the following, in pertinent part: "Our facility does not have a bargaining agent. Therefore, concurrent with the filing of this application, we are posting a copy of the attached notice in a conspicuous place in our facility for ten (10) consecutive business days starting March 30, 2004." Attached to Ms. [REDACTED] letter is another letter on the petitioner's letterhead, dated March 30, 2004, with subject line stating "Re: Filing of Alien Employment Certification for [the beneficiary]," from Ms. [REDACTED] to "Whom It May Concern," stating in full that "This letter is to serve notice that this facility is filing a permanent residence petition on behalf of the above-mentioned nurse. If there are any questions regarding this petition, kindly contact the undersigned. Thank you."

The director denied the petition on September 24, 2004 stating that there was no evidence that the petitioner posted the posting notice ten consecutive days prior to filing the petition and that the posting notice did not

contain the "required elements, such as rate of pay, job description, and the declaration that any person may provide documentary evidence bearing on the application to the local Employment Service Office."

On appeal, substituted counsel states that "the Notice of Vacancy posting was inadvertently omitted as an attachment to the letter that the petitioner had previously written to [CIS] attesting that the Notice had been filed. A copy of the Notice of Vacancy that was previously left out is enclosed for your file." Attached to the appeal is a "Notice of Vacancy" with a stamped "COPY" on it. The job title and rate of pay match the proffered position on the Form ETA 750A and visa petition. The notice's job description is different from the duties described on Item 13 of the Form ETA 750A and visa petition for the proffered position. The notice contains directions for applicants to contact the petitioner's administrator if interested in the position as well as DOL's regional or local offices.

The purpose of requiring the employer to post notice of the job opportunity is to provide U.S. workers with a meaningful opportunity to compete for the job and to assure that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations.<sup>1</sup> The record of proceeding does not contain evidence that the petitioner posted the notice, the one provided on appeal, in an appropriate location of its facility for ten consecutive days prior to filing the petition as required by 20 C.F.R. § 656.20(ii). Additionally, the petitioner's representative, Ms. [REDACTED], was specific in her March 30, 2004 letter that the petitioner was posting the notice after receiving the director's request for evidence notifying them of the deficiency in the evidence submitted with the initial petition. Thus, Ms. [REDACTED] stated that the petitioner was correcting that deficiency on March 30, 2004, after the date of filing the petition, by posting a notice then. The notice that Ms. [REDACTED] claimed was being posted lacked the content required by the regulation at 20 C.F.R. § 656.21(g)(3), as properly noted by the director in his decision. The director also properly noted that there was no evidence that the petitioner posted that posting notice ten consecutive days prior to filing the petition.

The content of Ms. [REDACTED] March 30, 2004 letter and posting notice submitted in response to the director's request for evidence directly contradict counsel's appellate assertions and the evidence submitted on appeal. *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*, 19 I&N Dec. at 591-592, also 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."

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 not sustained that burden.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> See the Immigration Act of 1990, Pub.L. No. 101-649, 122(b)(1), 1990 Stat. 358 (1990); see also Labor Certification Process for the Permanent Employment of Aliens in the United States and Implementation of the Immigration Act of 1990, 56 Fed. Reg. 32,244 (July 15, 1991).