

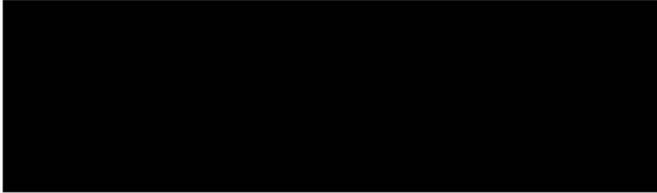


U.S. Citizenship
and Immigration
Services

B6

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



FILE: WAC 04 029 51899 Office: CALIFORNIA SERVICE CENTER Date: **MAR 09 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, Director
Administrative Appeals Office

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

The petitioner is a medical staffing service. 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. As required by statute, a Form ETA 750, Application for Alien Employment Certification accompanied the petition. The director determined that the petitioner had not established that it had filed the posting notice for the proffered position as prescribed by 20 C.F.R. § 656.20(g). Thus, the director determined that the petitioner had not demonstrated that the position qualified for Schedule A certification, and denied the petition accordingly.

On appeal, the petitioner submits a brief and no additional evidence.

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 November 12, 2003. 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.

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. 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 regulation at 20 C.F.R. § 656.20(g)(1) provides, in pertinent part:

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).

With the petition, the petitioner submitted a notice dated November 6, 2003, and signed by [REDACTED] Proprietor/CFO, (Ms. [REDACTED]) entitled "Employer's Certification, Re Compliance with Job Posting Notice Requirement," stated the following:

I hereby certify that a job notice for the position of Registered Nurse was posted from October 15, 2003 to present.

The job notice was posted in conspicuous places within the vicinity of our staffing agency. The job notice remained clearly visible and unobstructed during the entire period of posting.

On October 22, 2004, the director denied the petition. In his decision, the director stated that the petitioner had not submitted evidence that the job posting was posted in accordance with 20 C.F.R. § 656.20(g)(1), and that the petitioner had indicated in the certification that the notice was posted at the petitioner's staffing agency rather than where "the beneficiary would actually be working," i.e., the healthcare facilities that the petitioner services. The director further stated that Citizenship and Immigration Services (CIS) interprets the reference at 20 C.F.R. 656.20(g)(1)(ii) to mean the place of physical employment, which would be "the healthcare facilities where the beneficiary would perform services as a registered nurse." The director further noted that in the instant petition, the place of physical employment would be the healthcare facilities where the beneficiary would perform services as a registered nurse. The director then determined that the record indicated that the notice of filing had not been posted at the correct location. The director also stated that the notice had to be posted at least ten consecutive days prior to filing with the appropriate information contained in the notice, and that any subsequent effort by the petitioner to correct the notice of posting would constitute a material change to the petition. If the petitioner was not already eligible when the petition was filed, subsequent developments cannot retroactively establish eligibility as of the filing date, and cited *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Com. 1971.), and *Matter of Izumii*, 22 I&N Dec. 169 (Assoc. Comm., Examinations 1998).

On appeal, counsel asserts that the employer's premises, rather than the healthcare facilities it services, were the proper place for posting the job notice because the petitioner is the employer. As a staffing agency, the petitioner "deploys medical positions, including Registered Nurses, to various healthcare facilities or hospitals." Counsel asserts that the petitioner's business premises were "readily available for all the other employers to see [the job notice] since they report to the said company's location on a regular basis." Further, counsel asserts that each of the petitioner's client healthcare facilities "have their own set of hiring requirements...and do not want to go through the hiring processes. It is more convenient for the facilities to request staffing agencies to deploy needed services," counsel states. Moreover, the healthcare facilities generally don't permit posting of job opening notices on their premises, he states.

With the petition, counsel submitted a letter from Ms. [REDACTED] dated November 4, 2003, advising the director, "[T]here is no bargaining representative representing professional nurses at this institution."

The beneficiary will not be employed at the petitioner's offices but at some other location. The posting was not, then, posted at the "facility or location of employment," as required by 20 C.F.R. § 656.20(g)(1). The petitioner has indicated that the beneficiary will work at various hospitals and facilities, without greater specificity. The petitioner must post the notice at the physical location where the beneficiary would work, and in doing so, indicate where that location will actually be. Because it is not clear that the posting notice was posted at the actual "facility or location of the employment," the petitioner cannot establish that it has complied with the notice requirements at 20 C.F.R. § 656.20(g)(1). If the petitioner merely posted the notice at its administrative

office(s), the petitioner has not complied with this requirement. 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.¹ In the instant petition, it is noted those "similarly employed" would be nurses in the client hospitals.

The petitioner failed to demonstrate that a notice of the proffered position was posted in accordance with 20 C.F.R. § 656.20(g)(1).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ 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).