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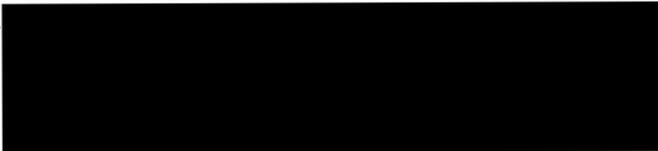


FILE: WAC 04 044 53162 Office: CALIFORNIA SERVICE CENTER Date: MAR 21 2006

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 long-term health care provider. The petitioner states it was established in 1994, has 5,400 employees, and has a gross annual income of \$280,000,000. 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 at the time of the petition's filing, the petitioner failed to provide notice of the filing of the Application for Foreign Alien Employment at the place of the beneficiary's prospective employment, as stipulated in 20 C.F.R. § 656.20(g)(1).

On appeal, counsel states that the petitioner posted the notice at both its corporate offices and at the specific nursing facility where the beneficiary would be employed. Counsel provides no further documentation.

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 4, 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. 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 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).

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).

In the petition, the petitioner stated that the beneficiary would work at [REDACTED] Fresno, California. With the petition, the petitioner submitted a cover letter signed by [REDACTED] Director of Human Resources, Aliso Viejo, California. In her letter, Ms. [REDACTED] certified that the beneficiary would be employed by the petitioner as a full-time registered nurse, and listed the beneficiary's job duties. Accompanying this letter is a document entitled "Job Posting Wanted: Registered Nurse." This notice lists the job duties, educational and work experience requirements for the position of registered nurse. The document also states that the notice was posted in a conspicuous place at the offices of [REDACTED] for a period of ten consecutive calendar days from September 3, 2003 to September 13, 2003. The record contains no other information as to the posting of the notice elsewhere.

On November 3, 2004, the director denied the petition. In his denial of the petition, the director stated that the record indicated that the location of the beneficiary's employment was [REDACTED] in Fresno, California. The director stated that CIS interpreted the reference to "facility or location of the employment" at 20 C.F.R. § 656.20(g)(1)(ii) to mean the physical location of employment, and that in the instant petition the place of physical employment would be the healthcare facility where the beneficiary would perform services as a registered nurse. The director then determined that the petitioner failed to post the notice in compliance with 20 C.F.R. §§ 656.20(g)(1) and (g)(8), and that any subsequent effort to correct the notice of posting would constitute a material change to the petition. The director also stated that his decision was without prejudice to a new filing in accordance with 20 C.F.R. § 656.22.

On appeal, counsel asserts that the petitioner posted the notice of filing both at the petitioner's corporate offices in Aliso Viejo, California, and at the job site at [REDACTED] Fresno, California. Counsel states that the petitioner fulfilled the requirements outlined in 20 C.F.R. § 656.20 (g)(2) with regard to the petitioner's posting of the notice of filing for labor certifications. Counsel provides no further documentation with regard to his assertions on the posting of the job notice.

The record contains a deficient posting notice that was filed with the initial petition. The posting notice indicates that the notice was posted at the corporate offices [REDACTED]. Under the regulations, the notice must be posted at the facility or location of the beneficiary's employment. Although the I-140 petition does state that the beneficiary will work at [REDACTED] in Fresno, California, the posting notice submitted to the record does not indicate that the notice was posted at the actual worksite, but rather at the petitioner's corporate offices in Aliso Viejo, California. On appeal, counsel states that the petitioner posted the notice at both its corporate offices in Aliso Viejo and at the [REDACTED] in Fresno, California. However, counsel provides no further evidentiary documentation to

further substantiate his assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner needs to prove it posted the notice where the beneficiary would work, and make it clear where that location will actually be. Because the petitioner has not demonstrated 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.<sup>1</sup> Therefore the director's decision shall stand, and the petition will be denied.

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. As previous noted by the director, the denial of the instant petition is without prejudice to a new filing in accordance with 20 C.F.R. 656.22.

**ORDER:** The appeal is dismissed. The petition is denied.

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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).