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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 06 086 52125

Date: DEC 05 2007

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, Chief
Administrative Appeals Office

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

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. § 656.5, Schedule A, Group I. A Form ETA 9089, Application for Permanent Employment Certification (Form ETA 9089 or labor certification) accompanied the petition. The director determined that the petition in this matter was not filed during the validity period of the Prevailing Wage Determination and denied the petition accordingly.

The record shows that the appeal is properly filed timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented in the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary. As set forth in the director's August 5, 2005 denial, the sole issue in this case is whether or not the petition is supported by a valid prevailing wage determination (PWD) in compliance with the requirements of the regulations.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 20 C.F.R. § 656.15(b)(1) states that an application pursuant to Schedule A must include a prevailing wage determination in accordance with 20 C.F.R. §§ 656.40 and 656.41.

The regulation at 20 C.F.R. § 656.40(c) states,

(c) Validity period. The SWA [State Workforce Agency] must specify the validity period of the prevailing wage, which in no event may be less than 90 days or more than 1 year from the determination date. To use a SWA PWD, employers must file their applications or begin the recruitment required by Sec. Sec. 656.17(d) or 656.21 within the validity period specified by the SWA.

The petition in this matter was submitted on June 27, 2006. The PWD then submitted states that it was valid from its September 2, 2005 determination date through the end of 2005. The director determined that the petition in this matter was not filed during the validity period of the PWD and, on April 12, 2006, denied the petition.

On appeal, counsel submitted a second PWD. That additional PWD also lists the instant petitioner as the intending employer. The validity period of that PWD is from its January 25, 2006 determination date through the end of 2006. The date the instant petition was submitted, June 27, 2006, fell within that period.

Page 3

The visa petition is supported by a valid PWD as required by the regulations. The sole basis for the decision of denial has been overcome on appeal, and this office perceives no other issue that precludes approval of the visa petition.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.