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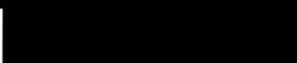
U.S. Citizenship
and Immigration
Services

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BC



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 18 2008

WAC 05 037 51719

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 employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely. The matter will now be reopened on our own motion and the appeal will be dismissed.

The petitioner is a skilled nursing home. It seeks to employ the beneficiary permanently in the United States as a registered nurse, pursuant to Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. Upon reviewing the petition, the director determined, *inter alia*, that the petitioner had not established that it had properly posted notice of filing an application for permanent employment certification, had not established the petitioner's ability to pay the proffered wage, and the petitioner failed to provide an advisory evaluation of the beneficiary's foreign educational credentials.

The petitioner appealed the director's decision on May 2, 2005, which appeal was rejected by the AAO since the appeal was received 34 days after the director's decision contrary to regulation.¹ Counsel has contested the AAO's decision, stating that since the last day of the appeal occurred on a Sunday, the appeal was timely and that the appeal was incorrectly rejected.

Notwithstanding counsel's objection, a review of Citizenship and Immigration Services (CIS) records indicates that, subsequent to filing the instant petition, another employer filed a Form I-140 petition under the same classification.. CIS records further indicate that the second petition was approved on June 10, 2008. The alien subsequently filed a Form I-485 Application to Adjust Status, which was approved on May 5, 2008. Because the alien has adjusted to lawful permanent resident status, further pursuit of the matter at hand is moot. Moreover, due to the beneficiary's adjustment of status, the dismissal of the appeal as moot will not have an adverse impact.

ORDER: The appeal is dismissed, based on the alien's adjustment to lawful permanent resident status.

¹ In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).