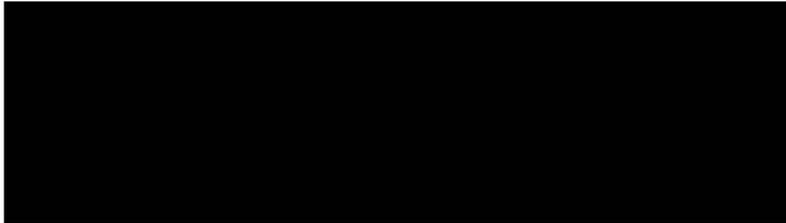




U.S. Citizenship
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FILE: LIN 06 064 52379

Office: NEBRASKA SERVICE CENTER

Date: **AUG 28 2007**

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 preference visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The petitioner is a medical services company. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The acting director determined that the evidence submitted does not demonstrate that adequate notice of filing the Application for Alien Certification was provided to the bargaining representative or the employer's employees required by the governing regulations.

In the decision of denial the acting director noted that the petitioner had provided a notice of the proffered position and an attestation that it had been posted at a location accessible to the petitioner's employees. The decision also included various regulations relevant to visa petitions submitted pursuant to Schedule A and stated that the posting of the proffered position failed to comply with those regulations in some unspecified way.

In denying a petition, a director has an affirmative duty to explain the specific reasons for the denial. This duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

The decision of denial did not inform the petitioner of the basis for the decision sufficiently clearly to provide the petitioner a meaningful opportunity to address that basis on appeal. The service center shall review the case and issue a new decision. If that decision is adverse to the interests of the petitioner the decision shall specifically state its basis. If the decision is based on the failure of the petitioner to comply with a regulation it shall state which regulation was contravened and the way in which the petitioner failed to comply with the requirements of the regulation. Any adverse decision shall also be certified to this office for review.

The record suggests an additional issue that was not addressed in the decision of denial. The Form I-140 petition states that the petitioner is seeking to hire the beneficiary as an "Associate Director/Physical Therapist, Physical Therapy Program." Physical therapists are included in Schedule A. Associate Directors are not. Whether the instant petition is amenable to treatment under the regulations pertinent to Schedule A is therefore unclear.

On remand the service center is permitted to pursue any issue pertinent to the approvability of the instant petition. The service center may also request evidence pertinent to those other issues.

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 not met that burden.

ORDER: The petition is remanded for further consideration and action in accordance with the foregoing.