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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
WAC 05 204 50153

Office: CALIFORNIA SERVICE CENTER

Date: JUL 09 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

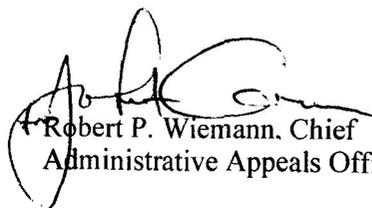
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[Redacted]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, and remanded to the director for further consideration of the petitioner's request for a duplicate copy of the certified labor certification.

The petitioner is an accounting service. It seeks to employ the beneficiary permanently in the United States as a bilingual secretary (English and Korean). Although required by statute, the I-140 petition was not accompanied by an original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. In the initial petition, former counsel¹ stated that the original labor certification was apparently misplaced by the petitioner's previous counsel, and requested that the director forward a copy of the petitioner's ETA 750 Final Determination to the Department of labor (DOL) to obtain a duplicate copy of the original certified ETA 750. In a request for further evidence dated November 8, 2005, the director requested the petitioner to submit a certified original DOL labor certification application to the record. In the petitioner's response to the director's RFE, prior counsel stated that the cover letter to the initial I-140 petition clearly stated that only a copy of the labor certification had been provided by initial counsel² and that the petitioner had requested that Citizenship and Immigration Services (CIS) request a duplicate original from the DOL. Former counsel stated that compliance with the petitioner's request was the only mechanism to resolve the matter of the original labor certification. On April 1, 2006, the director determined that CIS was only responsible for original labor certifications that had been submitted with an I-140 petition and lost after the petition had been properly filed with CIS. The director noted that it was necessary for the petitioner to begin the labor certification process again with DOL to obtain a new, certified labor certification. The director denied the petition accordingly. The director also noted that in accordance with 8 C.F.R. § 1103.3(a)(1)(ii),³ the decision may not be appealable.

On appeal, counsel submits a brief and additional evidence. Among the evidence submitted is a letter from Mr. Bachlott, to current counsel, dated April 12, 2006. In his letter, Mr. Bachlott stated that his office never received the original ETA Form 750 from the DOL for the instant petition, and that his office had sent a letter to DOL requesting a copy of the labor certification, after discovering the petitioner had received the notice of the final determination of the labor certification application, but not the original certified Form ETA 750. In his 2006 letter, Mr. Bachlott further states that he received a telephone call on or about December 16, 2003 from an individual named Martin Rios who advised him that DOL policy precluded issuing a duplicate certification to the employer or his attorney, and that Mr. Bachlott was advised that the petitioner should file the I-140 with CIS and upon their written request the DOL would issue a duplicate certification.

¹ The G-28 form, Notice of Entry of Appearance of Attorney or Representative submitted with the I-140 petition identifies Fred Borough, Law Offices of Fred D. Borough, Los Angeles, California, as the attorney of record. On appeal, current counsel is Jane Chung/Christopher Duran/Angie H.Kim, of Law Offices of Jane Chung, A.P.L.C. The Form ETA 750 labor certification application was prepared and signed by John R. Bachlott, Law Offices of John R. R. Bachlott and Martin S. Chu. Mr. Borough submitted additional materials addressed to Mr. Bachlott from the Employment Development Department, Alien Labor Certification Office, Sacramento, California, in his response to the director's RFE.

² Mr. Bachlott.

³ The director cited to the regulations for the Executive Office of Immigration Review (EOIR) with regard to appealable decisions. The correct cite for appealable decisions under the jurisdiction of the AAO is 8 C.F.R. § 103.1(f)(3)(iii)(2003 ed.).

Counsel also submits an excerpt from the American Immigration Lawyers Association (AILA) website referred to as AILA InfoNET Doc. No. 06022860 (posted February 28, 2006) entitled "Suggested Procedure for Requesting Duplicate Approved Labor Certification for I-140 Filing." This document outlines procedures proposed by an AILA-Service Center Operations Liaison committee with regard to requesting an approved labor certification from the DOL for I-140 filings. The document further states that the office of Service Center Operations concurred with the recommendations to place a cover sheet on the top of a I-140 petition stating "Lost or Misplaced Labor Certification, Request for Duplicate, Do Not Reject."

On appeal, counsel states that there is a misunderstanding as to whether and under what circumstances CIS bears responsibility to request an original labor certification from the DOL. Counsel notes that the director, without citing any authority, stated that CIS bears responsibility only for those original labor certifications that have been submitted with an I-140 petition and lost after the petition has been properly filed. Counsel refers to the list of procedures suggested by AILA to USCIS to request a duplicate certified labor certification and notes the procedures give as a reason for such a request: "Case was certified, original approved labor certificate was never received in the mail." Counsel refers to Mr. Bachlott's correspondence from 2003 and 2006 and notes that the AILA instructions for requesting issuance of duplicate original labor certifications clearly provide for such requests where, as in the instant petition, the original labor certification was never received in the mail and also provides procedures to be used, as in the instant petition, for requesting a duplicate labor certification with the submission of an I-140 petition.

Although the director cited to EOIR regulations in his decision, the director's determination as to the petitioner's ability to appeal the denial of a petition that lacks a certified Labor Application, or Form ETA 750, is correct. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. 8 C.F.R. § 103.1(f)(3)(iii)(B), as in effect on February 28, 2003, provided that the Associate Commissioner for Examinations [the AAO] exercises appellate jurisdiction over decisions on employment-based immigrant visa petitions except when the denial of the petition is based upon the lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A).

In the instant petition, the petitioner, through its initial counsel, submitted a copy of the front page of the certified ETA 750, stating the petitioner's previous counsel had misplaced the original certified ETA 750, and requested that the CIS forward a request for a duplicate copy of the certified labor certification to DOL. The director in his decision does not identify this document as fraudulent or questionable. On appeal, current counsel submits a letter dated December 5, 2003, written by John R. Bachlott, the petitioner's initial counsel, that stated the petitioner received the final determination notice from the DOL but never received the original certified Form ETA 750. In his letter Mr. Bachlott asked DOL to either provide his office with a copy of the approved ETA 750 or provide him with instructions on how to proceed in filing the I-140 petition. Counsel also provides a more recent letter from Mr. Bachlott in which he explains further guidance received from DOL with regard to filing a request for a duplicate copy of the certified labor certification application.

With regard to the AILA website excerpt submitted to the record, the AAO acknowledges that the AAO is not bound to follow the guidance provided by AILA. Therefore counsel's reliance upon AILA's Infonet documents

and suggested procedures for requesting duplicate certified labor certification is not persuasive. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS, formerly the Service or INS, are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Neither is guidance provided to practitioners through either AILA or the individual Service Centers, or in private correspondence with CIS officials. *See Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Nevertheless, the AAO also notes that the director in his assertion with regard to CIS' responsibility for requesting duplicate labor certifications only after filing the I-140 petition, provides no statutory or regulatory authority for his statement. With regard to the submission of requests for duplicate labor certifications, the DOL regulation at 20 C.F.R. § 656.30(e)(2) states the following:

The Certifying Officer shall issue a duplicate labor certification to a Consular or Immigration Officer at the written request of an alien, employer, or an alien's or employer's attorney/agent. Such request for a duplicate labor certification must be addressed to the Certifying Officer who issued the labor certification; must include documentary evidence from a Consular or Immigration Officer that a visa application or visa petition, as appropriate, has been filed; and must include a Consular Office or DHS tracking number.

The DOL regulation does not stipulate any condition such as the director outlined in his decision. Thus, while the AAO will reject the matter due to the lack of appellate jurisdiction in a case lacking a certification by the Secretary of Labor, it will remand the matter to the director for further clarification of the actual procedures for requesting a duplicate copy of a certified Form ETA 750.

ORDER: The appeal is rejected for lack of a certified labor certification. The matter is remanded to the director to allow the petitioner to request that DOL send a duplicate labor certification to CIS, and for entry of a new decision by the director.