U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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JUL 16 2009

FILE: LIN 06 236 51873 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a provider of healthcare services. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The director determined that the petition was not accompanied by a proper application for labor certification. The director denied the petition accordingly.

The petitioner subsequently filed an appeal. Title 8 C.F.R. § 103.2(a)(7)(i) requires that U.S. Citizenship and Immigration Services (USCIS) reject any petition or application filed with the incorrect filing fee. Likewise, 8 C.F.R. § 103.3(a)(2)(i) requires the affected party to file an appeal using Form I-290B. In this case, counsel submitted a brief and Form G-28, Notice of Entry of Appearance as Attorney or Representative, but failed to submit a properly executed Form I-290B. Therefore, the appeal will be rejected as improperly filed.

Moreover, even if the appeal were not being rejected for the reasons explained above, it would be dismissed.

The petitioner has applied for the beneficiary under a blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. *See also* 20 C.F.R. § 656.15. Schedule A is the list of occupations set forth at 20 C.F.R. §656.5 with respect to which the Department of Labor ("DOL") 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.

One of the requirements to meet Schedule A eligibility is that the petitioner is required to post the position in accordance with 20 C.F.R. §656.10(d), which provides:

> In applications filed under § 656.15 (Schedule A), § 656.16 (Sheepherders), § 656.17 (Basic Process), § 656.18 (College and University Teachers), and § 656.21 (Supervised Recruitment), the employer must give notice of the filing of the *Application for Permanent Employment Certification* and be able to document that notice was provided, if requested by the certifying officer, as follows:
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> . . .
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> (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 must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must 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.

The director found that the notice of posting submitted by the petitioner had been posted from July 1, 2006 to July 14, 2006. The director found that this did not amount to 10 consecutive business days

as July 1, 2, 8 and 9 fell on weekends and July 4, 2006 was a federal holiday. On appeal, counsel states that the petitioner's business is in operation on weekends and holidays and therefore, in this case, weekends and holidays should be counted as "business days."

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. A review of the discussion of changes made to the permanent labor certification application process from "Labor Certification for the Permanent Employment of Aliens in the United States: Implementation of New System" illustrates that the drafters of PERM changed the old requirement from "10 consecutive days" to "10 consecutive *business* days" to expand the notice requirement for petitioning employers (emphasis added). *See* 69 Fed. Reg. 77326, 77339 (December 27, 2004). Further, the DOL has provided guidance to the PERM regulations and posting requirements through the issuance of "Frequently Asked Questions." *See* http://www.foreignlaborcert.doleta.gov/faqanswers.cfm (accessed July 14, 2009). DOL guidance relating to posting notices provides:

> If the Notice of Filing is posted on Thursday, June 28, 2007, the posting dates must be June 28 – July 12, and the earliest filing date permissible is Saturday, August 11, 2007, (the notice of filing must be posted for "ten consecutive *business* days and, therefore, neither weekends nor the Fourth of July are counted).

No exemption is provided for entities whose business operations continue on weekends and holidays. Therefore, were this appeal not being rejected, the AAO would find that the director correctly excluded weekends and the fourth of July holiday from his calculation of "10 consecutive business days," and the appeal would be dismissed.

ORDER: The appeal is rejected.