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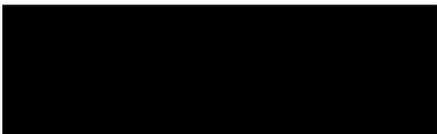
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE:



Office: TEXAS SERVICE CENTER Date: OCT 04 2010

IN RE:

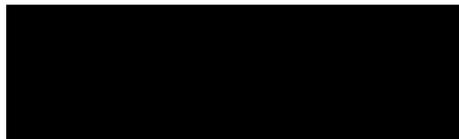
Petitioner:

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.

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhee  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director), certified the denial of the immigrant visa petition to the Administrative Appeals Office (AAO). The director's decision to deny the petition will be affirmed.

The petitioner is a healthcare placement business. It seeks to permanently employ the beneficiary in the United States as a registered nurse. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).<sup>1</sup>

The petition contains a blanket labor certification application 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 U.S. 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.

Based on 8 C.F.R. § 204.5(a)(2) and (l)(3)(i), an applicant for a Schedule A position must file a Form I-140, Immigrant Petition for Alien Worker accompanied by an application for Schedule A designation. The priority date of the petition is the date the petition is properly filed with U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 204.5(d).

The Schedule A application must include evidence of prearranged employment for the alien beneficiary. The employment is evidenced by the employer's completion of an ETA Form 9089, Application for Permanent Employment Certification and evidence that the employer has provided appropriate notice of filing the labor certification (Posting) to the bargaining representative or to the employer's employees as set forth in 20 C.F.R. § 656.10(d). The petitioner must also obtain a prevailing wage determination (PWD) in compliance with 20 C.F.R. § 656.40.

The instant petition was filed with USCIS on July 31, 2007. The ETA Form 9089 states that the prevailing wage is \$30.55 per hour and that the offered wage is \$30.60 per hour. The petition was accompanied by a PWD with a determination date of July 5, 2007.

The AAO notes that 20 CFR 656.40(c) states that the validity period for the prevailing wage must be more than 90 days and less than one year from the determination date. Because the filing date of the petition fell only 26 days after the determination date, the petition was not filed within the PWD's validity period.

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<sup>1</sup>Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

On appeal, counsel asserts that the PWD was valid at the time that the petition was filed, as its determination date was July 5, 2007. The AAO finds that the petitioner has failed to meet the terms of 20 CFR 656.40(c) and that the petition was not filed within the PWD's validity period. Accordingly, the petitioner has not obtained a PWD in compliance with 20 C.F.R. § 656.40.

In order for the petition to be approved, the petitioner must submit a PWD that complies with the requirements of 20 C.F.R. § 656.40. *See also* 20 C.F.R. § 656.15(b)(1). The regulation at 20 C.F.R. § 656.40(c) states that a Schedule A application must be filed within the validity period of the PWD. This is in contrast to the PERM labor certifications, which only requires the PWD to be valid during the recruitment period for the offered position. *Id.* However, since Schedule A occupations are designated by the DOL as shortage occupations, no recruitment is conducted as part of the Schedule A application process.

For Schedule A applications, the PWD must be valid when the petition and accompanying ETA Form 9089 are filed with USCIS. In the instant case, the petition was not filed within the PWD's validity period.

A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

For the reasons set forth above, the petitioner failed to submit a PWD that would permit an approval of the instant petition and accompanying Schedule A application.

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 appeal is dismissed.