(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: AUG 0 6 2012 OFFICE: TEXAS SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Texas Service Center. The matter was appealed to the Administrative Appeals Office (AAO). The matter will be remanded to the Texas Service Center.

The petitioner describes itself as a nursing services provider. It seeks to employ the beneficiary permanently in the United States as a human resources assistant. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the director's June 16, 2009 denial decision, it was determined that the petitioner did not demonstrate the ability to pay the proffered wage from the priority date, and that the beneficiary did not meet all of the requirements set forth on the labor certification.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, 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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Director, Texas Service Center found that the petitioner did not demonstrate the ability to pay the annual proffered wage of $41,000 based on the petitioner's 2007 IRS Form 1120S, U.S. Income Tax Return for an S Corporation. On appeal, counsel submitted the petitioner's 2008 and 2009 tax returns that establish the petitioner's ability to pay the proffered wage as of the June 9, 2008 priority date. Thus, this ground for denial is withdrawn.

The director also found that the evidence did not establish that the beneficiary was certified in cardiopulmonary resuscitation (CPR,) as required in Part H. 14. of ETA Form 9089, as of the priority date. On appeal, counsel submitted evidence of the beneficiary's CPR certification as of the priority date. Thus, this ground for denial is withdrawn.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part H of the labor certification reflects the following requirements:

H.4. Education: Minimum level required: High School.

9. Is a foreign educational equivalent acceptable?

The petitioner listed "yes" that a foreign educational equivalent would be accepted.

6. Experience: 24 months in the position offered.

14. Specific skills or other requirements: Must be certified in CPR, and must conduct trainings of staffing personnel on basic nursing functions using materials provided by employer.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Upon review of the record, the AAO has determined that the record does not contain evidence of the beneficiary's high school education, as required in part H. 4. of the labor certification. Furthermore, the submitted letter from [redacted] submitted as evidence of the beneficiary's requisite work experience does not describe the duties performed by the beneficiary or indicate whether the employment was full- or part-time. Therefore, the AAO will remand the case to the director to determine whether the beneficiary has the required education and experience for the proffered job.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issues stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.