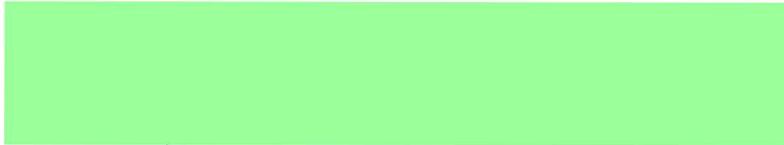


(b)(6)

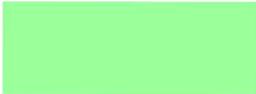
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



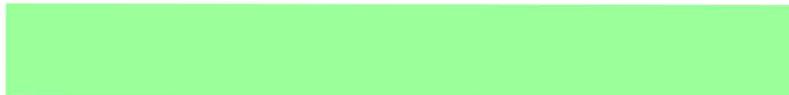
U.S. Citizenship
and Immigration
Services



DATE: **SEP 26 2012** OFFICE: NEBRASKA SERVICE CENTER

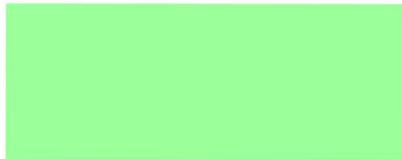
FILE: 

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,

Kenna Poulos for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a nursing agency. It seeks to employ the beneficiary permanently in the United States as a licensed practical nurse. The director determined that the petitioner had not submitted an original labor certification with the petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's December 12, 2007 decision, the petition was denied because the petitioner did not submit an original copy of an ETA Form 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).

The regulation at 8 C.F.R. § 103.2(b)(4) requires that the original labor certification be submitted unless the original was previously filed with the United States Citizenship and Immigration Services (USCIS). The petitioner indicates that it filed the original labor certification with the I-140 petition. The petitioner indicates that if the record does not contain the original labor certification it has been lost in the filing process and requests that USCIS obtain a duplicate labor certification from DOL.

The regulation at 20 C.F.R. § 656.30(e) provides for the issuance of duplicate labor certifications by the DOL only upon the written request of a consular or immigration officer.¹ The AAO has obtained an official duplicate labor certification. Therefore, the basis of the denial has been overcome.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.

¹ The regulation at 20 C.F.R. § 656.30(e) provides:

(e) Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an employer or alien's agent, therefore, may petition an Immigration or Consular Officer to request a duplicate from a Certifying Officer.