

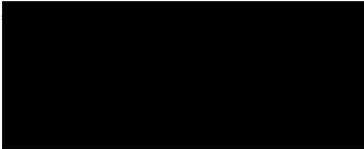
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U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

Date: SEP 08 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director determined that the petition in this matter could not be approved because is not accompanied by an approved Form ETA 750 Application for Alien Employment Certification<sup>1</sup>, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program, as required by 8 C.F.R. § 204.5(1)(3)(i).

8 C.F.R. § 103.1(f)(3)(iii) states, in pertinent part:

*Appellate Authorities.* In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:

(B) Petitioner for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

The regulation at 8 C.F.R. § 204.5 (1)(3) states in pertinent part.

*Initial evidence –(i) Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program...

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). *See* DHS Delegation Number 0150.1(U) *supra*, 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigration visa classification based upon employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.).

Since the record of proceeding demonstrates that the director denied the petition based upon a lack of certification by the Secretary of Labor, this office lacks jurisdiction to consider an appeal from the director's decision. Therefore, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> The petitioner stated that the original certified Form ETA 750 was in another CIS file, and, it requested the withdrawal of that approved petition and the substitution of the subject beneficiary. The record of proceedings does not contain sufficient information such as the previous petition's receipt number or a copy of the Notice of Action Form I-797 of the petition approval that would allow CIS to identify the previously approved petition.

