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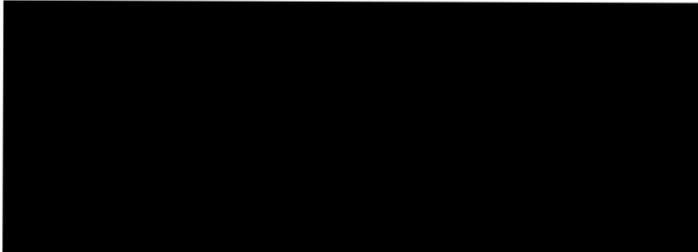
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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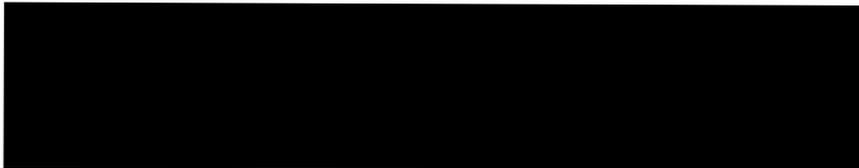
FILE: WAC 03 268 54265 Office: CALIFORNIA SERVICE CENTER Date: **MAR 27 2006**

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 immigrant visa petition was denied by the director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a long-term health care provider. The petitioner states it was established in 1923, has 4,047 employees, and is a not-for-profit business entity. It seeks to sponsor the beneficiary in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director denied the petition after determining that at the time of the petition's filing, the petitioner failed to provide notice of the filing of the Application for Foreign Alien Employment at the place of the beneficiary's prospective employment, as stipulated in 20 C.F.R. § 656.20(g)(1).

On appeal, counsel states that the petitioner, due to the high volume of openings and posting, did not provide it with copies of all posted notices place for open nurse positions, but rather uses the term "ongoing" or "continuous" in its posting which means in excess of the ten days required under 20 C.F.R. § 656.20(g)(ii). Counsel submits a letter from the petitioner's director of recruitment, and further documentation.

Section 203(b)(3) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In this case, the petitioner filed an Immigrant Petition for Alien Worker (Form I-140) for classification of the beneficiary under section 203(b)(3)(A)(i) of the Act as a registered nurse on September 29, 2003. Aliens who will be permanently employed as professional nurses are listed on Schedule A as occupations set forth at 20 C.F.R. § 656.10 for which the Director of the United States Employment Service 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. Also, according to 20 C.F.R. § 656.10, aliens who will be permanently employed as professional nurses must have (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or (2) hold a full and unrestricted license to practice professional nursing in the [s]tate of intended employment.

An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA-750 at Part A) in duplicate with the appropriate Citizenship and Immigration Services (CIS) office. The Application for Alien Employment Certification shall include:

1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.
2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

Under 20 C.F.R. § 656.20, the regulations require the following:

In applications filed under 656.21 (Basic Process), 656.21a (Special Handling) and 656.22 (Schedule A), the employer shall document that notice of the filing of the Application for Alien Employment Certification was provided:

- (i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment.
- (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 shall be posted for at least 10 consecutive days. The notice shall be clearly visible and unobstructed while posted and shall 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. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

The Form ETA 750 submitted by the petitioner indicates the beneficiary will work for [REDACTED], and provides the petitioner's corporate headquarters address, namely, [REDACTED] Sacramento, California. With the petition, the petitioner submitted a document that described the petitioner as a community based not for profit entity that provided patient services at two campuses, [REDACTED] and [REDACTED] and also supported support for charity care and various community programs and services. The document further describes [REDACTED] Medical Center, Sacramento as a [REDACTED] Health affiliate, and further states that [REDACTED], as one of the nation's leading not for profit networks of community-based health care providers, delivering high quality care in more than 100 Northern California communities. The petitioner also submitted a letter from [REDACTED] (Ms. Moreno), Director of Recruitment, that described the petitioner as having a health network with 29 acute care hospitals, and that the downtown Sacramento Medical Center was made up of several facilities that include Sutter General Hospital, [REDACTED] Memorial Hospital [REDACTED] and the [REDACTED] for Psychiatry.

The petitioner also submitted an employment letter signed by both the beneficiary and the petitioner. The letter of employment for the beneficiary states that he will work at the [REDACTED] unit in the [REDACTED] in Sacramento, California, located at 2801 L Street. The petitioner also submitted a document, from the petitioner's website that details the qualifications for a position, the hours, and the exiting employee name, along with a salary range. There is no indication on the job description as to its posting by the petitioner. A second letter from Ms. Moreno stated that the preceding notice was posted in an unobstructed, conspicuous, and clearly visible location at [REDACTED] Sacramento, California. The letter also stated that the notice was posted continuously, and that there were no qualified applicants for the position.

On October 1, 2004, the director denied the petition. In his denial of the petition, the director stated that the record indicated that the petitioner had not submitted evidence that the notice was posted in accordance with 20 C.F.R. § 656.20(g)(1). The director stated that the petitioner in its posting notice failed to state that applicants should report to the petitioner, and not to the local employment office; to state that the notice was being provided as a result of filing an application for permanent alien labor certification for the relevant job opportunity and failed to state that any person may provide documentary evidence bearing on the application to the local employment service office and/or the regional certifying officer of the Department of Labor (DOL).

The director then determined that since the petitioner failed to post the notice in compliance with 20 C.F.R. 656.20(g)(1) and (g)(8), and did not post the notice for at least ten consecutive days prior to filing the petition, any subsequent effort by the petitioner to correct the notice of posting would constitute a material change to the petition. The director also noted that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. The director stated that the decision was taken without prejudice to a new filing in accordance with 20 C.F.R. 656.22.

On appeal, counsel states that the petitioner did not provide counsel with copies of all posted notices placed for open nurse positions. Counsel states that this was due to the high volume of openings and postings. Counsel asserts that the petitioner has continuously posted a notice that complies with the requirements at Schedule A 20 C.F.R. 656.20(g) since 2003. Counsel submits an additional letter from Ms. [REDACTED] and states that the use of the term ongoing or continuous in the job posting was included to emphasize that the position were posted in excess of the ten days required under 20 C.F.R. § 656.20(g)(ii). In her additional letter, Ms. [REDACTED] states that the petitioner has numerous I-140 Schedule A nurse petitions filed with the service center, and that it recently came to the petitioner's attention that some of the pending petitions may not have included all of the various posting notices that the petitioner has used since commencing the petitioner's extensive recruitment efforts in 2003. Mr. [REDACTED] states that due to the tremendous volume of recruitment conducted to date, the petitioner continuously is posting positions internally as it is the petitioner's policy to recruit from within prior to seeking applicants externally. Ms. [REDACTED] states that the petitioner wished to confirm that its postings have various formats, and that although some job notices are posted following its internal hospital format, the petitioner has also continuously maintained a notice which meets Schedule A requirements. Ms. [REDACTED] submits copies of postings that have been placed since April 2003, and adds that the notation on some postings of the word "ongoing" as a period of time is to emphasize that the petitioner has continuously placed these postings in excess of the required ten-day period.

Ms. [REDACTED] then asks that the director accept her letter and attachments as confirmation of the petitioner's good faith recruitment efforts and compliance with petition filing requirements. She also requests that her letter and attachments be included in Service Center files for favorable consideration in adjudicating the petitioner's other Schedule A nurse petitions. Ms. [REDACTED] submits the following documents:

A cover letter signed by Ms. [REDACTED] addressed to legacy INS dated April 24, 2003 that states the preceding notice was posted in an obstructed, conspicuous, and clearly visible location at [REDACTED] Sacramento, California. The cover letter also states the notice was posted ongoing, and that there were no qualified applicants for the position. The notice attached to this cover letter is four pages and contains some information on an emergency room nursing position. It also contains what appears to be a job description for internal and external applicants as well as a job application questionnaire form. The information items on this form are generic, and provide no specific information on job level, education level, or position status of the position;

An identical cover letter written by Ms. [REDACTED] dated May 15, 2003. The job notice attached to this letter describes a generic nursing position with no specific job or work location identified, along with necessary educational and work requirements. The notice contains information with regard to the notice being provided as a result of an application for alien worker, as well as contact information for the local state employment development department or the DOL employment certification officer;

An identical cover letter signed by Ms. [REDACTED] dated June 6, 2003. The notice that accompanied this letter states the job description is an external one, and provides qualification, for the position,

hours per two week pay period, a primary work location of Sacramento, California, among other information items. The notice does not state that the position involves a application for foreign labor certification and contact information for state employment offices or DOL certifying officer;

An identical cover letter signed by Ms. [REDACTED] addressed to legacy INS and dated September 10, 2003. This letter has no attached job notice;

An identical cover letter signed by Ms. [REDACTED] and dated October 22, 2003, that states the notice was posted in an unobstructed, conspicuous and clearly visible location at [REDACTED] Medical Center, Sacramento, California. The accompanying job notice states the registered nurse position is in Sacramento, California, provides a generic position description, salary, work schedule, education and work experience requirements, and also states that the notice is being provided as a result of an application for an alien worker. The notice also provides the contact information for the state employment development department, foreign labor certification office, and the DOL certifying officer; and

Two documents entitled Position Available that are signed by Ms. [REDACTED] and dated August 23, 2004. The job positions are identified as registered nurses and the position location is Sacramento, California. Ms. [REDACTED] incorporated the contents of prior cover letters into these two documents that states the notice was posted in unobstructed, conspicuous, and clearly visible locations at [REDACTED] Sacramento, California, on an on-going basis, and that no qualified applicants had applied for the positions.

The record is not clear as to whether any of these notices is actually for the position proffered to the beneficiary in the instant petition. The first job notice provided by Ms. [REDACTED] on appeal appears to be an internal job application/questionnaire and does not appear relevant to these proceedings. With regard to the remaining job notices provided by the petitioner on appeal, none appear to identify specific nursing positions, but rather a generic nursing position, within the [REDACTED] medical system in the Sacramento, California area. All postings, with the exception of one cover letter that states the posting was placed at [REDACTED], appear to have been posted at [REDACTED] with no specific address provided.

As described in the petitioner's brochure submitted to the record, [REDACTED] consists of several medical facilities in Sacramento. As previously stated, the job offer as stated in the employment letter signed by both the beneficiary and the petitioner is for a nursing position at the 4S Telemetry unit in Sutter General Hospital, located on L Street in Sacramento, while [REDACTED] Medical Center is located at 5151 F Street. As such, posting a notice at [REDACTED] is not tantamount to posting a notice at [REDACTED]. Thus, the petitioner has not provided sufficient evidence that prior to the filing of the instant petition in September 29, 2003, the petitioner's job posting met Schedule A requirements for job postings as stipulated by 20 C.F.R. § 656.20 (g) and 20 C.F.R. § 656.20(g)(3)(ii) and (iii).

Under the regulations, the notice must be posted at the facility or location of the beneficiary's employment. Neither the job posting provided with the initial petition nor the samples of job notices submitted by Ms. [REDACTED] on appeal provide sufficient evidence that the job posting in question was posted at the beneficiary's actual place of employment. 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.¹ Therefore the director's decision shall be affirmed, and the petition will be denied.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.

¹ See the Immigration Act of 1990, Pub.L. No. 101-649, 122(b)(1), 1990 Stat. 358 (1990); *see also* Labor Certification Process for the Permanent Employment of Aliens in the United States and Implementation of the Immigration Act of 1990, 56 Fed. Reg. 32, 244 (July 15, 1991).