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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

WAC 04 215 54155

Office: CALIFORNIA SERVICE CENTER

Date:

JUL 31 2007

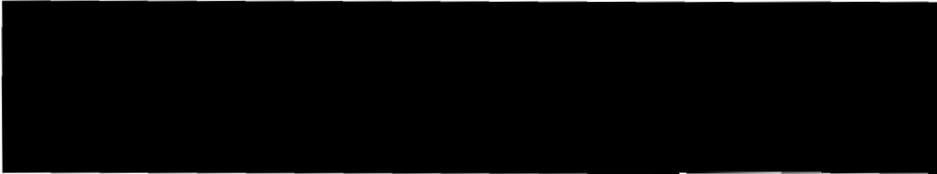
IN RE:

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The previous decision of the director will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a skilled nursing home. It seeks to employ the beneficiary permanently in the United States as a staff 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 determined that the evidence submitted did not demonstrate that the notice of filing the Application for Alien Employment Certification according to the regulations at 20 C.F.R. § 656.20(g)(1), and (g)(8) were made, and that notice must be posted at least 10 consecutive days prior to filing with the appropriate information contained in the notice. The director found that any subsequent effort by the petitioner to correct the notice of posting would constitute a material, and prohibited, change to the petition.¹

On appeal, counsel submits an appeal brief and additional evidence.

The director noted that the petitioner failed to respond to a notice of intent to deny issued to the petitioner on January 31, 2005, requesting evidence of compliance with the above mentioned regulations. The director found that the petition was not, therefore, approvable on the date of filing and denied the petition.

On appeal, counsel asserts as follows:

The California Service Center erred in concluding that the Petitioner failed to respond [to] the Notice of Intent to Deny dated January 31, 2005. Please refer to the attached Appeal Brief and a copy of Requested Information per your Notice of Intent to Deny submitted to your office through certified [sic U.S. express mail] mail dated February 7, 2005 and received by your office on Feb. 8, 2005.

As additional evidence submitted on appeal, counsel submitted copies of the following documents: an appeal brief June 8, 2005; the director's decision dated May 18, 2005; an explanatory letter from counsel dated February 5, 2005; the director's Notice of Intent to Deny dated January 31, 2005; a blank template attachment to ITD Coversheet entitled "Sample Notice of Filing of Application for Alien Employment Certification under U.S. Department of Labor Schedule A, Group I;" the Form ETA 750 Application for Alien Employment Certification form submitted with the subject petition; a CIS Form I-797Y Receipt Notice and a CIS Form I-797C Notice of Action; an undated JOB OPENING NOTICE; an undated NOTICE; a Customer Copy of express mail sent by counsel to California Service Center dated February 7, 2005; a copy of the U.S. postal transaction receipt; an express mail article number card identifier, not post marked, but stamped received by the CIS service center on February 8, 2005; and a copy of a web page accessed April 14, 2005 of the subject case status.

According to the above evidence submitted upon appeal, the petitioner did send a timely response to the director's NOID dated January 31, 2005. The previous decision of the director will be withdrawn. The AAO

¹ The chronological progression of this case is as follows: The I-140 petition was filed on July 28, 2004 accompanied by the Alien Employment Certification Application for a Schedule A beneficiary, a staff nurse; the director issued a notice of intent to deny (NOID) the petition on January 31, 2005; the director issued a notice of decision in the case denying the petition on May 18, 2005 specifying that the petitioner failed to respond to the NOID and therefore failing to provide necessary evidence. However, according to documents found in the record of proceeding, the petitioner did respond to the NOID on February 8, 2005.

will remand the case to the director for consideration of the petitioner's response to the NOID. The director may request any additional pertinent evidence. Upon receipt of all evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.