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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B6

FILE: [REDACTED]  
LIN-07-022-52134

Office: NEBRASKA SERVICE CENTER

Date: **APR 21 2009**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[REDACTED]

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.

John F. Grissom  
Acting 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 petition will be remanded to the director.

The petitioner is a healthcare-surgery center. It seeks to employ the beneficiary permanently in the United States as a registered nurse (operating room nurse). The petitioner asserts that the beneficiary qualifies for Schedule A, Group I labor certification pursuant to 20 C.F.R. § 656.5(a). On August 3, 2007, the director issued a request for evidence granting the petitioner 12 weeks until September 14, 2007 to submit requested evidence.<sup>1</sup> Although counsel mailed the response on September 13, 2007 via Federal Express with delivery scheduled for September 14, 2007, the director received the response on October 1, 2007. As set forth in the director's March 22, 2008 decision, the director denied the petition based on the fact that the response to the director's RFE was submitted untimely.

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.

Section 203(b)(3)(A)(i) of 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 or seasonal nature, for which qualified workers are not available in the United States.

On appeal, counsel asserts that the response to the director's RFE was mailed with timely delivery and that the delay of delivery was beyond the control of the petitioner, the beneficiary and counsel. Counsel also submits a letter dated April 15, 2008 from [REDACTED] of FedEx confirming that the package of the response to the director's RFE was shipped on September 13 and scheduled to be delivered via their Standard Overnight Service, by 3:00 PM on September 14, 2007 and that the delay of delivery is clearly not typical of their usual precision and reliability. FedEx also apologizes for the delay of delivery in that letter. Although the response was delivered to the director on October 1, 2007, 17 days after the due day, it was still received by the director more than five months before the director's March 22, 2008 decision. In his denial, the director also confirmed that the petitioner's response met most or all requirements set forth in the RFE. Upon careful review of the unusual circumstances in this matter, the AAO concurs with counsel's assertion that the petition should be given an opportunity for a substantive adjudication and decision on the merits.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to consider the evidence submitted in response to his RFE. The director

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<sup>1</sup> The petitioner submitted a copy of the notice of posting, but failed to state where and for how long the notice was posted, and whether it remained clearly visible and unobstructed for the entire period of posting. The petitioner also failed to provide a complete description of the job offered within the notice. Therefore, the director denied the petition.

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. 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.