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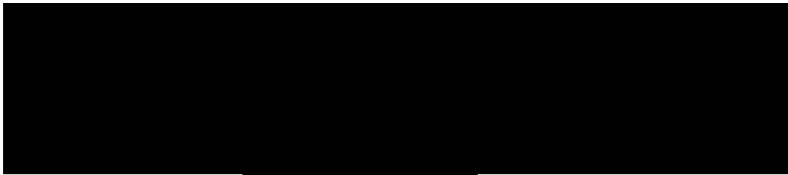
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



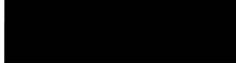
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 03 2009

WAC 03 072 51972

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition. The matter was appealed to the Administrative Appeals Office (AAO), and the AAO remanded the appeal to the director. The director denied the petition and invalidated the labor certification. The petitioner filed an appeal of that decision to the AAO. The AAO remanded the appeal to the director. The director issued a Notice of Intent to Deny (NOID) on June 12, 2007. Citing a failure by the petitioner to respond to the NOID, the director denied the petition on April 8, 2008 and certified her decision to the AAO. The matter will be remanded.

The petitioner is a health care facility. It seeks to employ the beneficiary permanently in the United States as a medical records technician. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the director's April 8, 2008 decision, the director determined that that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position. The director denied the petition accordingly.

The petitioner did not submit a brief or additional evidence in connection with the director's certification to the AAO.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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 nature, for which qualified workers are not available in the United States.

The AAO reviewed the record of proceeding under its *de novo* review authority. The authority to adjudicate appeals is delegated to the AAO by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)

Upon review of the record, the AAO has determined that the director's NOID and her April 8, 2008 decision were not properly sent to the petitioner or the petitioner's counsel in the instant matter. Therefore, the AAO will remand the case to the director to send proper notification of the NOID in this case.¹

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to reissue the NOID in this case. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a

¹ Pursuant to a Form G-28 dated October 9, 2003, the petitioner's counsel is [REDACTED]. The petitioner's address is [REDACTED], [REDACTED], [REDACTED].

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.