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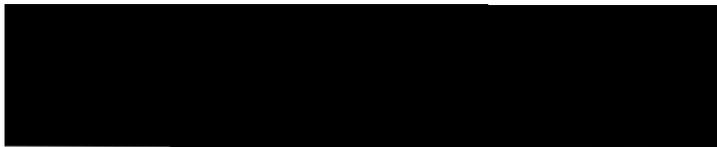
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
LIN 08 030 52057

Office: NEBRASKA SERVICE CENTER

Date: SEP 3 - 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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, Nebraska Service Center, denied the preference visa petition. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further consideration and entry of a new decision.

The petitioner is a home health care business. It seeks to employ the beneficiary permanently in the United States as a translator. The director determined that the petitioner had not submitted with the petition an original labor certification (Form ETA 750, Application for Alien Employment Certification, or Form 9089, Application for Permanent Employment Certification) approved by the Department of Labor as required by statute. The director denied the petition accordingly.

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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's June 15, 2009 denial, the issue in this case is whether or not the petitioner submitted with the petition an original labor certification (Form ETA 750, Application for Alien Employment Certification, or Form 9089, Application for Permanent Employment Certification) approved by the Department of Labor as required by statute.

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 or seasonal nature, for which qualified workers are not available in the United States.

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

Initial evidence. (1) General. Specific requirements for initial supporting documents for the various employment-based immigrant classifications are set forth in this section. In general, ordinary legible photocopies of such documents (*except for labor certifications from the Department of Labor*) will be acceptable for initial filing and approval. However, at the discretion of the director, original documents may be required in individual cases. Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of

the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

(Emphasis added.)

The regulation at 8 C.F.R. § 103.2(b)(4) states:

Submitting copies of documents. Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP-66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the [U. S. Citizenship and Immigration Services (USCIS)].

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 immigrant visa classification based on 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.). However, in this case, counsel submitted evidence of an approved labor certification with the original petition. Counsel did note that the original labor certification had been lost by either the Department of Labor or the petitioner's previous attorney.

The regulation at 20 C.F.R. § 656.30(e) states:

Duplicate labor certifications.

- 1) The Certifying Officer shall issue a duplicate labor certification at the written request of a Consular or Immigration Officer. The Certifying Officer shall issue such duplicate labor certifications only to the Consular or Immigration Officer who initiated the request.
- 2) The Certifying Officer shall issue a duplicate labor certification to a Consular or Immigration Officer at the written request of an alien, employer, or an alien's or employer's attorney/agent. Such request for a duplicate labor certification must be addressed to the Certifying Officer who issued the labor certification; must include documentary evidence from a Consular or Immigration Officer that a visa application or visa petition, as appropriate, has been filed; and must include a Consular Officer or DHS tracking number.

In the instant case, the record contains information from counsel in the record of proceeding explaining that the original labor certification was lost by either the Department of Labor (DOL) or the petitioner's previous attorney. Counsel submitted an e-mail from the certifying officer from DOL confirming that she would be sending a duplicate copy of the labor certification to the Nebraska Service Center. Service center records also indicate that the director may have possession of the labor certification. Therefore, as the record contains evidence that the petitioner has an approved labor certification, and the director may possess the approved labor certification, the petition will be remanded to the director for inclusion of the labor certification into the record of proceeding, so that the director may take favorable action on the matter if warranted. The director shall adjudicate the merits of the case and the director may request any other evidence that he deems appropriate if necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of June 15, 2009 is withdrawn. The petition is remanded to the director for inclusion of the duplicate labor certification if available or when obtained and issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.