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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

B6

File:



Office: TEXAS SERVICE CENTER

Date:

JAN 10 2011

In re:

Petitioner:

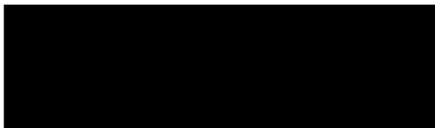
Beneficiary:



Petition:

*Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)*

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Kerian S. Pontus for*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director), denied the immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner is an individual and seeks to employ the beneficiary permanently in the United States as a housekeeper, pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). The petition was filed with a labor certification approved by the Department of Labor (DOL) on August 7, 2007, and valid for 180 days (until February 3, 2008). The director denied the petition because he determined that the petitioner had failed to establish her ability to pay the proffered wage.

Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

The labor certification is evidence of an individual alien's admissibility under section 212(a)(5)(A)(i) of the Act, which provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The regulation at 20 C.F.R. § 656.30(b)(1) provides: "An approved permanent labor certification granted on or after July 16, 2007 **expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days** of the date the Department of Labor granted the certification." (Emphasis added).

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petition was filed on April 21, 2008, with a labor certification approved by the DOL on August 7, 2007, and valid until February 3, 2008. 78 days passed after the expiration of the labor certification's validity date and prior to the filing of the petition with United States Citizenship and Immigration Services (USCIS). As the filing of the instant case was after 180 days of the labor certification's expiration, the petition was, therefore, filed without a valid labor certification pursuant to 8 C.F.R. § 204.5(l)(3)(i).

The Secretary of the Department of Homeland Security (DHS) delegates the authority to adjudicate appeals to the AAO pursuant to the authority vested in her 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.).

As the labor certification is expired, the petition is not accompanied by a valid labor certification, and this office lacks jurisdiction to consider an appeal from the director's decision.

**ORDER:** The appeal is rejected.