

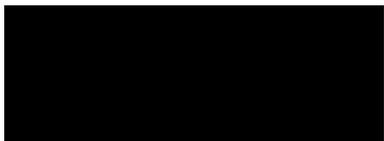
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

DATE: JUL 07 2011 OFFICE: TEXAS SERVICE CENTER

FILE:

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:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner describes itself as a “synagogue/temple/school.” It seeks to employ the beneficiary permanently in the United States as a “Maintenance Repairer, Bldg.,” pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ The petition was filed with a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The director’s decision denying the petition concludes that the petition was filed without a valid labor certification.

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.”

The petitioner initially attempted to file the instant petition on [REDACTED] 2008 with a labor certification approved by the DOL on [REDACTED] 2007, and valid until April 1, 2008. However, the petition was rejected and returned to the petitioner’s former counsel on April 4, 2008. The stated basis for returning the petition was that it was not properly signed. The regulation at 8 C.F.R. § 103.2(a)(7)(i) states that a “petition which is not properly signed...shall be rejected as improperly filed. Rejected [petitions] will not retain a filing date.”

¹ 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 nature, for which qualified workers are not available in the United States.

The petition contains a date stamp indicating that it was resubmitted on [REDACTED] 2008. The record also contains a correspondence from the director the petitioner dated [REDACTED] 2008, stating that the petition cannot be processed because the validity of the labor certification had expired.²

The petitioner resubmitted the petition a third time on [REDACTED] 2008. On [REDACTED] 2009, the director denied the petition for lack for a valid labor certification. Again, as the petitioner submitted the petition over 180 days after the approval of the labor certification by the DOL, the petition was filed without a valid labor certification pursuant to 8 C.F.R. § 204.5(l)(3)(i). The decision states that there is “[n]o appeal from [a] decision arising from the absence of a valid labor certification.” (Emphasis omitted).

On [REDACTED] 2009, the petitioner appealed the decision to the AAO. Counsel claims on appeal that the petition was properly filed on [REDACTED], 2008 with “[a]ll signatures in place on the paperwork.” This claim on Form I-290B, by itself, is not sufficient to establish that the director incorrectly rejected the petitioner’s initial submission of the petition.³

Regardless, as the director noted on the denial, the AAO does not have jurisdiction to adjudicate appeals of petition denials based on the lack of a valid labor certification. 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).

² On appeal, former counsel claims that the director returned this attempted filing to an address in New York. There is evidence in the record that corroborates this claim. However, even if the director returned the attempted filing to an incorrect address, this error did not prejudice the petitioner as the validity of the labor certification had expired on April 1, 2008.

³ Although it is not clear from the documents in the record, it appears that the initially rejected petition was improperly submitted with a facsimile copy of the Form I-140 signature page. *See* 8 C.F.R. § 103.2(a)(2). It is noted that former counsel’s signature dates are different on the original Form I-140 signature page and the facsimile of the Form I-140 signature page in the record. This discrepancy undermines former counsel’s claim that all signatures were in place on the petition when it was originally submitted. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the validity of the labor certification had expired by the petition filing date, 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.