

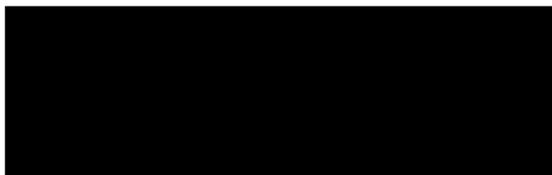
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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DATE **JUL 07 2011** OFFICE: NEBRASKA SERVICE CENTER

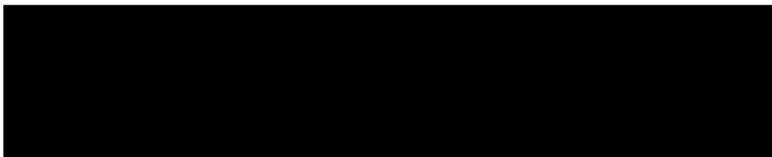
FILE: 

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:



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 employment-based immigrant petition was initially approved by the Director, Nebraska Service Center (director). On March 5, 2008, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition. On May 20, 2008, the director issued a Notice of Revocation (NOR), revoking the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a health care staffing company. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

The petition contains a blanket labor certification application pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. *See also* 20 C.F.R. § 656.15. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.5 with respect to which the U.S. Department of Labor (DOL) has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

Based on 8 C.F.R. § 204.5(a)(2) and (1)(3)(i), an applicant for a Schedule A position must file a Form I-140, Immigrant Petition for Alien Worker, accompanied by an application for Schedule A designation. The priority date of the petition is October 31, 2006, which is the date the petition was filed with U.S. Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. § 204.5(d).

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). In the instant case, the NOR concluded that the petitioner was not offering the beneficiary permanent employment, and that the petitioner failed to establish its ability to pay the proffered wage.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

During the adjudication of the appeal, evidence came to light that the petition may be moot. On May 5, 2011, the AAO issued a Notice of Derogatory Evidence and Request for Evidence (NDI/RFE) advising the petitioner that the record contains an approved Form I-140 filed by St. John Health System on behalf of the beneficiary, as well as a labor certification indicating that the beneficiary

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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.

has been a direct employee of [REDACTED] since March 26, 2007. The petitioner was also advised that the record contains a November 7, 2007, letter from counsel stating that the beneficiary "is working at [REDACTED] and [the beneficiary] and St. [REDACTED] determined that she would work as their direct employee."

The NDI/RFE informed the petitioner that it must maintain a continuing intent to permanently employ the beneficiary in the offered position, and that it did not appear that the petitioner intended to employ the beneficiary as a registered nurse. Where no legitimate job offer exists for the offered position, the request that a foreign worker be allowed to fill the offered position has become moot, and the petition must be denied.

Accordingly, the NDI/RFE instructed the petitioner to provide a statement confirming its continuing intent to permanently employ the beneficiary as a registered nurse upon the issuance of her lawful permanent residence. The NDI/RFE also requested that the petitioner provide a statement from the beneficiary confirming that she intends to be permanently employed as a registered nurse with the petitioner upon the issuance of her lawful permanent residence.

The NDI/RFE also requested that the petitioner submit additional evidence establishing its ability to pay the proffered wage, including its annual reports, federal tax returns or audited financial statements for 2007, 2008, 2009 and 2010; any Forms W-2 or 1099 issued to the beneficiary since 2006; and evidence that it has paid any H-1B workers the required wage since the priority date of the instant petition.

The NDI/RFE was sent to the most recent address for the petitioner and counsel of record listed in the record of proceeding and in USCIS databases. The petitioner was provided with 30 days to respond to the NDI/RFE. *See* 8 C.F.R. § 103.2(b)(8). The petitioner was informed that, if it chose not to respond, the AAO would dismiss the appeal without further discussion.

To date the AAO has not received a response to the RFE/NDI from the petitioner. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The AAO is unable to substantively adjudicate the appeal without a meaningful response to the line of inquiry set forth in the RFE/NDI. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.