

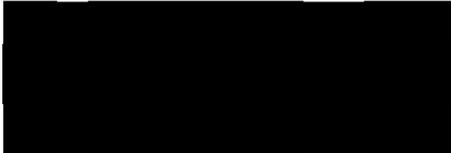
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

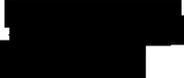


**U.S. Citizenship
and Immigration
Services**



B6

DATE: JUN 10 2011 Office: NEBRASKA SERVICE CENTER

FILE: 

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:

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 employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On February 25, 2010, [REDACTED] filed a Form I-140, Immigrant Petition for Alien Worker, as a single household seeking the beneficiary's services as a children's nurse and domestic employee pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii).¹ The Nebraska Service Center director denied the petition on May 28, 2010, after determining that [REDACTED] had not established his continuing ability to pay the proffered wage of \$1,395.00 per month (\$16,740.00 annually) from the priority date of April 30, 2001. The director's decision has been appealed to the AAO.

The Notice of Appeal, Form I-290B, indicates that attorney [REDACTED] represents the beneficiary. On June 29, 2010, the attorney filed the appeal on behalf of the beneficiary. It is noted that the record contains no Form G-28, Notice of Entry of Appearance as Attorney or Representative, to establish that counsel represents the petitioner in this matter. There is a Form G-28 for the attorney's representation of the beneficiary.

8 C.F.R. § 103.3(a) (1) (iii) states, in pertinent part:

(B) Meaning of affected party. For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. § 103.3(a) (2) (v) states:

Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by an individual claiming to represent the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected.²

¹ 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.

² It is noted that the petitioner has also failed to establish whether or not the minimum requirements reflected on the labor certification exceeded the requirements of the classification sought, which is limited to those aliens who will be performing unskilled labor requiring less than two years training or experience. As noted in footnote 1 supra, 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

ORDER: The appeal is rejected.

paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. 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.

In the instant matter, on Part 2.g. of the Form I-140, the petitioner indicated that he was filing the petition for any other worker (requiring less than two years of training or experience). In contrast, the petitioner submitted an approved labor certification application which indicated at part 14 that the position required 2 years of training as a nurse's aid and 5 years experience in the job offered.

The regulation at 8 C.F.R. § 204.5(i) provides in pertinent part:

(4) Differentiating between skilled and other workers. The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

In this case, the labor certification indicates that there is a two year training requirement and a five year experience requirement for the proffered position. However, the petitioner requested that the Form I-140 be approved for any other worker (requiring less than two years of training or experience). There is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) to re-adjudicate a petition under a different visa classification in response to a petitioner's request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

The evidence submitted does not establish that the petition requires less than two years of training or experience such that the beneficiary may be found qualified for classification as an unskilled worker. If the appeal were not being rejected, the petition could not be approved for this additional reason even if it were sustained on its merits.