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



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

[REDACTED]

B6

DATE: **JUN 29 2011** Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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)

IN BEHALF OF PETITIONER:

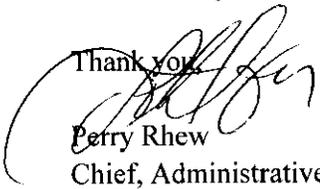
[REDACTED]

**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 your 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 preference visa petition was denied by the Director, Nebraska Service Center because the petition was not properly filed with a valid labor certification. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director determined that the petition must be denied because it was not accompanied by an approved Form ETA 750, Application for Alien Employment Certification, as required by 8 C.F.R. § 204.5(l)(3)(i). The director denied the petition on July 30, 2010.

The petitioner, through counsel, elected to file an appeal as designated on Form I-290B, Notice of Appeal or Motion. It is asserted on appeal that the original labor certification was submitted with the preference visa petition.

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 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 regulation at 8 C.F.R. §204.5 states in pertinent part:

(1) *Skilled workers, professionals, and other workers . . .*

\* \* \*

(3) *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. § 103.1(f)(3)(iii) (2003) states in pertinent part:

*Appellate Authorities.* In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§204.5 and 204.6 of this chapter *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;*

(Emphasis added).

The Immigrant Petition for Alien Worker (Form I-140) was filed on August 1, 2007. The director reviewed the record and determined that the Form I-140 was not accompanied by the required individual approved labor certification, Form ETA 750, although the petitioner asserts otherwise.<sup>1</sup> As such, the petition was improperly filed. The director denied the petition based on the lack of an original labor certification from the DOL. In accordance with 8 C.F.R. § 103.1(f)(3)(iii)(B), the AAO lacks jurisdiction to decide any appeal 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.

**ORDER:** The AAO lacks jurisdiction to decide the appeal. The appeal is rejected.

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<sup>1</sup> There is also no indication in the record that the Form I-140 was accompanied by any evidence relating to the petitioner's ability to pay the proffered wage, or evidence to show that the beneficiary had the required education and work experience in accordance with 8 C.F.R. § 204.5(g)(1) & (g)(2). The record lacks an original Form ETA 750. The regulations at 8 C.F.R. §§ 204.5(a)(2) and 204.5(l)(3)(i) require that any Form I-140 petition filed under the preference category of Section 203(b)(3) of the Act be accompanied by a labor certification. The regulation at 8 C.F.R. § 103.2(b) provides:

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 [USCIS].

(Emphasis added).

The regulation at 8 C.F.R. § 204.5(g) provides: "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." (emphasis added). The regulation at 20 C.F.R. § 656.30(e) provides for the issuance of duplicate labor certifications by the DOL only upon the written request of a consular or immigration officer. The record contains no evidence that the petitioner has obtained an official duplicate labor certification or requested the director to do so until the appeal. However, as the petition was denied based on the lack of an original labor certification as set forth above, the AAO lacks jurisdiction on the appeal. Without jurisdiction, the AAO may not adjudicate the appeal, or remand the petition to the director for consideration.