

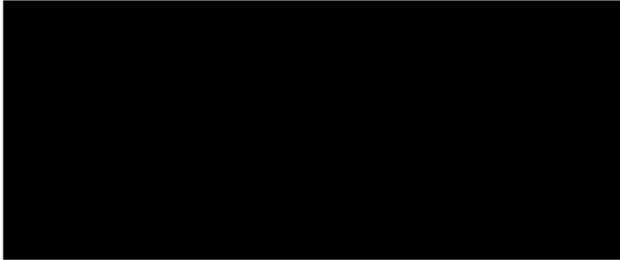
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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

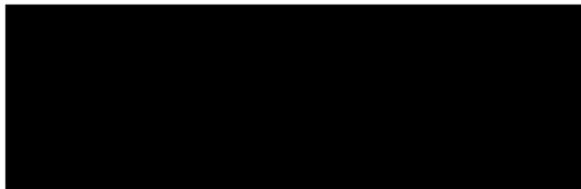
Date: **AUG 10 2012** Office: NEBRASKA SERVICE CENTER

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,   
for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was a provider of staffing services to long term healthcare facilities. It sought to employ the beneficiary permanently in the United States as a registered nurse pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). The petition is accompanied by an uncertified ETA Form 9089, Application for Permanent Employment Certification. The director determined that the petitioner, Staffing Remedies (with Federal Employer Identification Number or FEIN 75-3016528 as listed at part C. 7., of the Form ETA 9089 and Part 1, of the Form I-140, Immigrant Petition for Alien Worker), failed to submit sufficient evidence establishing the continuing ability to pay the proffered wage to the beneficiary since the priority date. The director further determined that the petitioner had not established that it has extended a bona fide offer of permanent employment to the beneficiary because the terms of the employment agreement between the beneficiary and the petitioner allowed the beneficiary to terminate employment with the petitioner anytime between the start of employment and within two years he is introduced to a client of the petitioner and directly works for that client. Finally, the director determined that the purported signature of the beneficiary contained in the employment agreement between the petitioner and the beneficiary was not credible because this signature appeared not to match other signatures of the beneficiary contained on other documents in the record. Therefore, the director denied the petition accordingly. The petitioner filed a timely appeal.

The AAO issued a Notice of Intent to Dismiss (NOID) to counsel and the petitioner, Staffing Remedies with FEIN [REDACTED] on June 22, 2012, informing them that a review of the website at [http://appext9.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY](http://appext9.dos.ny.gov/corp_public/CORPSEARCH.ENTITY) (accessed on June 12, 2012), reveals that the business entity, Staffing Remedies, LLC, had been dissolved on December 8, 2006. In addition, this website reflects that the business entity, Staffing Remedies Temporaries, Inc., had been dissolved on October 27, 2010. Further, this website reflects that the business entity, Staffing Remedies, Inc., had been dissolved on October 26, 2011. Finally, a review of this website reveals that the business entity, GT Systems, Inc., which is alleged to be the parent company and sole shareholder of the petitioner on appeal, had been dissolved on October 26, 2011. Therefore, the AAO requested that the petitioner, Staffing Remedies with FEIN [REDACTED] provide a current certificate of good standing or other evidence demonstrating that the petitioning business is not inactive and had current business activity.

The AAO noted that the record contains no credible evidence to establish the nature of the relationships between the different business entities listed above. Although the record contains a financial statement prepared by certified public accountants, [REDACTED], [REDACTED], for 2006 and 2007, which reflects that this business entity is the parent company of both [REDACTED] the financial statement clearly states that all information included therein are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the nature of the relationships between these business entities. In addition, the record contains Forms W-

2, Wage and Tax Statement, reflecting wages paid by the business entity, [REDACTED], with FEIN [REDACTED], to the beneficiary in 2007 and 2008. Therefore, the petitioner, Staffing Remedies with FEIN [REDACTED] was asked to provide evidence reflecting the specific nature of any relationship between the business entities, [REDACTED], or any other business entity claiming a relationship to the petitioner.

The petition is for a Schedule A occupation. A Schedule A occupation is an occupation codified at 20 § C.F.R. 656.5(a) for which the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. The current list of Schedule A occupations includes professional nurses and physical therapists. *Id.*

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089 from the DOL prior to filing the petition with United States Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with a duplicate uncertified ETA Form 9089. *See* 8 C.F.R. §§ 204.5(a)(2) and (l)(3)(i); *see also* 20 C.F.R. § 656.15.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the instant case, the Form I-140 petition accompanied by an uncertified ETA Form 9089 was filed on August 16, 2007. The proffered wage as stated on the ETA Form 9089 is \$26.00 per hour or \$54,080.00 annually based on a work year of 2,080 hours. Therefore, the petitioner must establish the continuing ability to pay the proffered wage since August 16, 2007.

The petitioner must establish that its job offer to the beneficiary is a realistic one. A petitioner for a Schedule A occupation must establish that the job offer was realistic as of the date the Form I-140 petition was filed and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2).

While the record does contain Forms W-2, Wage and Tax Statement, reflecting wages paid by the business entity, Personal Touch, Inc., with FEIN [REDACTED] to the beneficiary in 2007 and 2008,

and pay vouchers issued by the business entity, "TEMP PAYROLL SYSTEM," with an indeterminate FEIN, to the beneficiary in 2007 and 2008, the record contains no evidence establishing the petitioner's (Staffing Remedies with FEIN [REDACTED] continuing ability to pay the proffered wage since August 16, 2007. It is imperative for the AAO to determine that all of the supporting documents contained in the record are consistent with the claims made on the present petition. Thus, in order to meet its burden of proving by a preponderance of the evidence that the petitioner, Staffing Remedies with FEIN [REDACTED] had the continuing ability to pay the proffered wage since August 16, 2007, the petitioner was asked to submit copies of its federal tax returns for 2007, 2008, 2009, 2010, and 2011. The AAO requested that the petitioner, Staffing Remedies with FEIN [REDACTED] include any Form W-2 statements or Forms 1099-MISC, Miscellaneous Income, issued to the beneficiary by the petitioner in 2007, 2008, 2009, 2010, and 2011. If it is claimed that any payroll company (whether an independent business entity or a wholly-owned subsidiary) or parent company paid wages to the beneficiary on the petitioner's behalf in the years from 2007 through 2011, the AAO requested evidence reflecting the specific nature of the relationship between such business entity and the petitioner, Staffing Remedies with FEIN [REDACTED]

Although not noted by the director in denying the petition, the record does not contain sufficient evidence establishing that the beneficiary meets the requirements of the offered job as listed on the ETA Form 9089. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (AAO's *de novo* authority is well recognized by the federal courts).

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. In this matter, Part H, line 3, of the ETA Form 9089 lists the proffered job as "Registered Nurse," and line 4 of the labor certification reflects that an associate's degree is the minimum level of education required. Line 14 reflects that a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) and a license as a registered nurse are also required for employment in the offered job. Furthermore, at Part J of the ETA Form 9089 where the petitioner is required to list biographic information relating to the beneficiary, lines 11, 12, 13, and 14 note that the beneficiary received an associate's degree in nursing from Bronx Community College in 2006.

USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *See generally Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is

completed by the prospective employer.” *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification, must involve “reading and applying *the plain language* of the [labor certification application form].” *Id.* at 834 (emphasis added).

Although the record contains a copy of the beneficiary’s CGFNS certificate, this certificate expired on June 7, 2012. In addition, the record contains no evidence establishing that the beneficiary received an associate’s degree in nursing from Bronx Community College in 2006 or that the beneficiary is currently licensed as a registered nurse in the state of New York. Therefore, the AAO requested that the petitioner provide a copy of the beneficiary’s current CGFNS certificate, evidence including copies of a diploma and transcripts demonstrating that the beneficiary received an associate’s degree in nursing from Bronx Community College in 2006, and evidence that the beneficiary has been and is currently licensed as a registered nurse in the state of New York since August 16, 2007.

The petitioner and counsel were given 30 days to respond to the NOID. The AAO specifically alerted the petitioner and counsel that failure to respond to the NOID would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. 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).

More than 30 days have passed since the NOID was issued on June 22, 2012, and the AAO has received no response from the petitioner. Accordingly, the appeal will be dismissed.

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

**ORDER:** The appeal is dismissed.