

(b)(6)

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

DATE: DEC 18 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.

Thank you,

*Rachel Pituro*  
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Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The preference 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.

The petitioner is a landscaping business. It seeks to employ the beneficiary permanently in the United States as a landscape gardener. The petitioner failed to properly submit an original Form ETA 750 Application for Alien Employment Certification, approved by the Department of Labor (DOL). The regulation at 8 C.F.R. § 103.2(b)(4) requires that, "application, and petition forms, and documents issued to support an application or petition (such as labor certifications . . . ) must be submitted in the original unless previously filed with USCIS [U.S. Citizenship and Immigration Services]." Here, the petitioner's counsel submitted a letter stating that the petitioner was unable to provide the original Form ETA 750 and that the petitioner requests that USCIS request a duplicate copy of the certified Form ETA 750. The petitioner did not submit a copy of the labor certification.

The director inquired with DOL, but DOL was unable to locate the record based on the information available. As the record lacked an original labor certification and further lacked a complete copy, the director could not determine whether the beneficiary was qualified for the position offered. A petitioner must establish the beneficiary's eligibility for the visa classification at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Accordingly, as set forth in the director's August 3, 2007 decision, the petition was denied as the filing lacked the original Form ETA 750.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

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

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

On appeal, the petitioner provided: a copy of a receipt notice from DOL; a copy of a certified mail receipt; and a copy of a Notice of Findings with an intent to deny the Application for Alien Employment Certification from DOL dated March 12, 2002. Based on the information provided, AAO was able to obtain verification from DOL that a labor certification was certified on April 16, 2002 after issuance of the above referenced Notice of Findings, but no copy was available and no other information concerning the substantive terms of the job offer or represented qualifications of the beneficiary was available.

A complete and original Form ETA 750 would be necessary for adjudication to verify the authenticity of the information contained therein. Additionally, USCIS cannot adjudicate a case which has no information about petitioning entity, the substantive terms of the job offer, and representations about the beneficiary's qualifications. *See also* 8 C.F.R. § 103.2(b)(4), which requires an original labor certification.

In the instant case, the appeal must be rejected for lack of jurisdiction. The AAO's jurisdiction is limited to the authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation No. 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2005 ed.). Pursuant to that delegation, the AAO's jurisdiction is limited to those 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) (2005 ed.).

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) (2003 ed.).

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.