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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

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Date: JAN 05 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 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 preference visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner applied for the beneficiary under a blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. *See also* 20 C.F.R. § 656.15. The director determined that the petitioner failed to properly post the position in accordance with 20 C.F.R. § 656.10(d)(1), which provides:

- (1) In applications filed under § 656.15 (Schedule A), § 656.16 (Shepherders), § 656.17 (Basic Process); § 656.18 (College and University Teachers), and § 656.21 (Supervised Recruitment), the employer must give notice of the filing of the Application for Permanent Employment Certification and be able to document that notice was provided, if requested by the certifying officer as follows:

...

- (ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment . . . In addition, the employer must publish the notice in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of similar positions in the employer's organization.

The director determined that the posting notice initially submitted with the petition was deficient because it was posted from June 15, 2007 to June 25, 2007, which is not for the required time period of 10 consecutive business days as June 16, June 17, June 23, and June 24 were weekend days. The director denied the petition concluding that the petitioner failed to properly post the position in accordance with 20 C.F.R. § 656.10(d)(1).

The AAO issued a Request for Evidence (RFE) to counsel and the petitioner on October 19, 2011, informing the parties that the AAO takes judicial notice of a recent decision of the Department of Labor's (DOL) Board of Alien Labor Certification Appeals (BALCA), *In the Matter of Il Cortile Restaurant*, 2010-PER-00683 (BALCA October 12, 2010). In that decision, BALCA concluded that the purpose of the notice requirement of 20 C.F.R. § 656.10(d)(1)(ii) can be fulfilled when a Notice of Filing is posted for 10 consecutive days "when employees are on the worksite and [are] able to see the Notice of Filing." *Id.* at 4. BALCA also stated that "[a]s long as an employer has employees

working on the premises on a Saturday, Sunday, or holiday, those days are business days for the purposes of complying with the Notice of Filing posting." *Id.* Although BALCA decisions are not binding on U.S. Citizenship and Immigration Services (USCIS), the AAO has in the past followed the DOL's definition of "business day" as used in 20 C.F.R. § 656.10(d)(1)(ii) for purposes of considering whether a Notice of Filing complies with that regulation.

Consequently, the AAO requested that the petitioner provide evidence that, at the time the Notice of Filing was posted in June 2007, [REDACTED] was open for business on a Saturday and/or a Sunday within the posting period, as well as on any of the weekdays falling within the posting period, so that it is established that the Notice of Filing was posted for 10 business days between June 15, 2007 to June 25, 2007. This response was to include evidence that it is more likely than not that employees were working on the premises at [REDACTED] for each of those 10 days; that the worksite at [REDACTED] was open and available to patients and employees on each of those 10 days; and that the employees had access to the area where the Notice of Filing was posted. In addition, the AAO requested that the petitioner indicate where the Notice of Filing was posted in the building and submit evidence that the petitioner's employees had access to this area on all days that the petitioner was open, including any Saturdays, Sundays, or holidays.

In the RFE, the AAO specifically alerted the parties that failure to respond to the RFE 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).

Because counsel and the petitioner failed to respond to the RFE, the AAO is dismissing the appeal.

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.