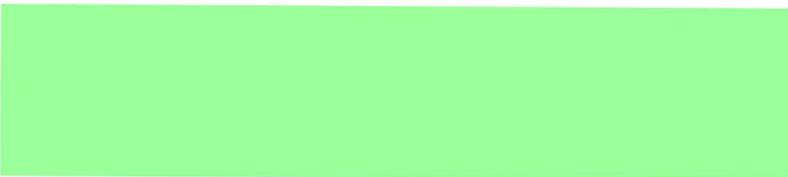


(b)(6)

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

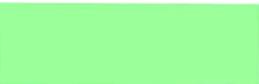


U.S. Citizenship  
and Immigration  
Services



Date: MAR 27 2012

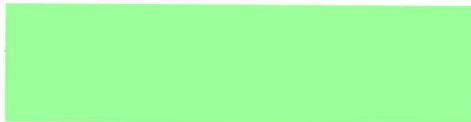
Office: TEXAS SERVICE CENTER

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director), denied the immigrant visa petition. The petitioner subsequently filed a motion to reopen. The director dismissed the motion as untimely. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Texas Service Center.

The petitioner is a staffing/recruitment company. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).

The petitioner has 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. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.5 with respect to which the United States Department of Labor (DOL) has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

The director's decision denying the petition concluded that the petitioner failed to demonstrate its ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). The director then dismissed the subsequent motion as untimely filed. On appeal, the petitioner submitted evidence establishing that the motion was, in fact, timely filed. Therefore, the AAO will remand the case to the director for consideration of the motion.

In addition to the issue of the petitioner's ability to pay the proffered wage,<sup>1</sup> the director should also address the sufficiency of the posting notice for the offered position. The regulation at 20 C.F.R. § 656.10(d)(3) requires the following:

The notice of the filing of an Application for Permanent Employment Certification must:

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<sup>1</sup> According to USCIS records, the petitioner has filed multiple I-140 petitions on behalf of other beneficiaries. If a petitioner has filed multiple petitions for multiple beneficiaries, the petitioner must establish that it has the ability to pay the proffered wages to each beneficiary. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

In determining whether the petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS will add together the proffered wages for each beneficiary for each year starting from the priority date of the instant petition, and analyze the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered for the period prior to the priority dates of their respective Form I-140 petitions, after the dates the beneficiaries obtained lawful permanent residence, or after the dates their Form I-140 petitions have been withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not consider the petitioner's ability to pay additional beneficiaries for each year that the beneficiary of the instant petition was paid the full proffered wage.

- (i) State the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;
- (ii) State any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor;
- (iii) Provide the address of the appropriate Certifying Officer; and
- (iv) Be provided between 30 and 180 days before filing the application.

The posting in the record does not provide the address of the appropriate Certifying Officer. For employment in New York, the proper address of the appropriate Certifying Officer is:<sup>2</sup>

United States Department of Labor  
Atlanta National Processing Center  
Harris Tower  
233 Peachtree Street, N.E., Suite 410  
Atlanta, Georgia 30303

Additionally, there is no evidence whether or not the petitioner published the notice internally using in-house media. The regulation at 20 C.F.R. § 656.10(d)(ii) provides:

[T]he 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 documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of all in-house media, whether electronic or print, that were used to distribute notice of the application in accordance with the procedures used for similar positions within the employer's organization.

20 C.F.R. § 656.10(d) does not define "in-house media" or what sources in-house media would comprise. The initial PERM regulation published at 69 Fed. Reg. 77326 provides only that the posting must be "published in any and all in-house media in accordance with the normal procedures used for the recruitment of other similar positions." 69 Fed. Reg. at 77338.

DOL's FAQ response "Round 10" provides that "the regulations require that the employer publish the notice internally using in-house media – whether electronic or print – in accordance with the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question." See [www.foreignlaborcert.doleta.gov/faqsanswers.cfm](http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm) (accessed February 15, 2012). The FAQ response further provides that:

The language should give sufficient notice to interested persons of the employer's having filed an application for permanent alien labor certification . . . it is not required

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<sup>2</sup> See <http://www.foreignlaborcert.doleta.gov/perm.cfm> (accessed February 15, 2012).

to mirror, word for word, the physical posting... . In every case, the Notice of Filing that is posted to the employer's in-house media must state the rate of pay and apprise the reader that any person may provide documentary evidence bearing on the application to the Certifying Officer.

DOL's FAQ response notes that the posting contemplates internal notification of the petitioner's employees rather than external notification to the public at large. Further, the posting requirement relates to the employer's "normal procedures used for the recruitment of similar positions in the employer's organization."

There is no evidence in record that the petitioner complied with the in-house media requirement set forth above, such as evidence of the in-house media used, or, alternatively, a statement that its normal procedures for the recruitment of similar positions in the organization do not include the use of in-house media.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The decision of the director is withdrawn. The petition is remanded to the director of the Texas Service Center for further action in accordance with the foregoing and entry of a new decision.