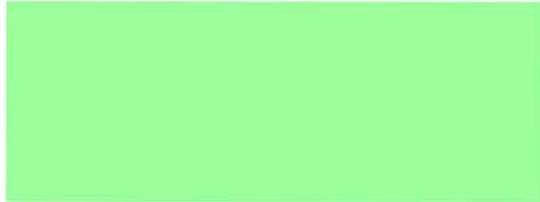


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)

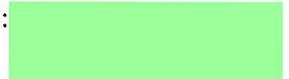


Date:

MAY 16 2013

Office: NEBRASKA SERVICE CENTER

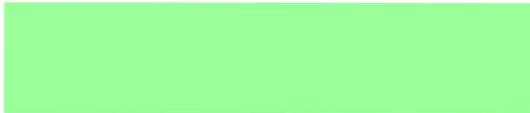
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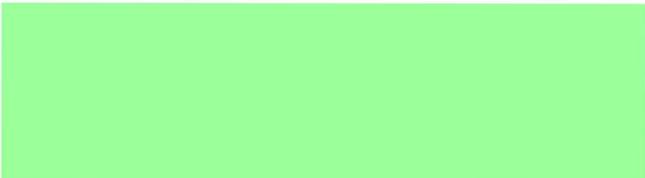
Petitioner:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner operates as a healthcare provider, and seeks to employ the beneficiary permanently in the United States as a registered nurse, 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).

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions. The regulation at 8 C.F.R. § 204.5(l)(2), and section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(3)(ii).

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 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.

Based on 8 C.F.R. §§ 204.5(a)(2) and (l)(3)(i) an applicant for a Schedule A position would file Form I-140, “accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien’s occupation qualifies as a shortage occupation within the Department of Labor’s Labor Market Information Pilot Program.”¹ The priority date of any petition filed for classification under section 203(b) of the Act “shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [United States Citizenship and Immigration Services (USCIS)].” 8 C.F.R. § 204.5(d). Here, the priority date is October 31, 2006.

Pursuant to the regulations set forth in Title 20 of the Code of Federal Regulations, the filing must include evidence of prearranged employment for the alien beneficiary. The employment is evidenced by the employer’s completion of the job offer description on the application form and evidence that the employer has provided appropriate notice of filing the Application for Alien Employment Certification

¹ On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA-9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

to the bargaining representative or to the employer's employees as set forth in 20 C.F.R. § 656.10(d). Also, according to 20 C.F.R. § 656.15(c)(2), aliens who will be permanently employed as professional nurses must have (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or (2) hold a full and unrestricted license to practice professional nursing in the [s]tate of intended employment, or (3) that the alien has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

The director denied the petition because he found that the petitioner failed to properly post the position in accordance with 20 C.F.R. § 656.10(d)(1) and failed to provide documentary evidence or employer attestation concerning the publication of the notice in any in-house media as required under 20 C.F.R. § 656.10(d)(1)(ii). With regard to the posting issue, the director specifically noted that the petitioner did not post notice of the available position for 10 consecutive business days as required by regulation.

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.²

The record shows that the appeal is properly filed, timely and makes an allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

On appeal, counsel asserts that the notice was posted for more than 10 consecutive days and that all regulatory posting requirements have been met. It is further asserted that the petitioner does not have in-house media at its facility. In 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) 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*.

The petitioner responded to the AAO request with evidence that shows that the notice was posted more than 10 consecutive business days and met regulatory requirements of 20 C.F.R. § 656.10(d).

The record further establishes that the regulatory posting requirements of 20 C.F.R. § 656.10(d)(3)(i)(ii) and (iv) have been established. The director further noted that the petitioner failed to provide documentary evidence or an employer attestation concerning the publication of the notice in any in-house media as required under 20 C.F.R. § 656.10(d)(1)(ii). On appeal, the

² 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).

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petitioner submitted statements from [REDACTED], the petitioners [REDACTED] [REDACTED] the petitioner's Director of Human Resources. Both individuals state that the petitioner does not have any in-house media other than an employee bulletin board (entitled Open Position Report) located next to the human resources department, and a Staff Communication Board. Both individuals attest that the posting notice submitted with the Form I-140 was posted on both bulletin boards. The petitioner has provided evidence in the form of employee statements to overcome the director's objection in this regard.

Accordingly, the petition will be approved. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition is approved.