

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: JUL 31 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The director subsequently accepted the matter on a motion to reopen, but affirmed the initial decision and the petition remained denied. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner<sup>1</sup> describes itself as a “Health Care Services Firm.” It seeks to permanently employ the beneficiary in the United States as a Registered Nurse. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).<sup>2</sup>

At issue in this case are whether the petitioner’s the job opportunity is for full-time, permanent employment. Beyond the director’s decision,<sup>3</sup> additional issues in this case are whether the petitioner properly filed its Immigrant Petition for Alien Worker, Form I-140, and whether the petitioner complied with the Department of Labor’s notice requirements.

## I. PROCEDURAL HISTORY

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. *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 U.S. Citizenship and Immigration Services (USCIS). *See* section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A). 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 (1)(3)(i); *see also* 20 C.F.R. § 656.15. The petition was filed with USCIS on April 5, 2007.

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<sup>1</sup> The petitioner [REDACTED] is also referred to in various documents submitted by the petitioner as [REDACTED]. Evidence in the record establishes that the petitioner is a wholly-owned subsidiary of [REDACTED].

<sup>2</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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.

<sup>3</sup> A petition that fails to comply with the technical requirements of the law may be denied by this office 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*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The director initially denied the petition because the petitioner failed to establish that it was offering a *bona fide*, full-time and permanent job opportunity, and because the petitioner failed to establish its ability to pay the beneficiary's proffered wage. On motion, the director found that the petitioner established that it had the ability to pay the beneficiary's proffered wage; however, the petition remained denied on the ground that the petitioner failed to establish that it was the beneficiary's intended employer, and that it was offering a *bona fide*, full-time and permanent job opportunity to the beneficiary.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.<sup>4</sup> We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>5</sup> A petition that fails to comply with the technical requirements of the law may be denied by our office even if the director does not identify all of the grounds for denial in the initial decision.<sup>6</sup>

## II. LAW AND ANALYSIS

At the outset, we note the petitioner's request for oral argument.<sup>7</sup> The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel<sup>8</sup> identified no unique factors or issues of law to be

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<sup>4</sup> *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also* *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>5</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

<sup>6</sup> *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

<sup>7</sup> The petitioner also requests that we "reopen and approve the other 16 identical cases that were denied within one week of the original decision in this case." The petitioner's assertion of other "identical" cases being denied within that period of time is insufficient grounds to reopen other cases. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

<sup>8</sup> Form I-140, Part 9, indicates that it was prepared by an attorney at [REDACTED] in [REDACTED] Maryland. A June 4, 2009, letter accompanying the petitioner's appeal states that the petitioner's former counsel "was hired by [REDACTED] to serve as Executive Director and Immigration Counsel." As such, the petitioner is self-represented. References to counsel in this decision are to the petitioner's executive director and immigration counsel.

resolved. In fact, counsel set forth no specific reasons why oral argument should be held; rather, counsel indicates its request for oral argument is “to permit further discussion of the ‘bona fide offer’ issue.” Moreover, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

A. The Job Opportunity Must be for Permanent, Full-Time Employment

The director’s decision found that the petitioner appears to operate both as a permanent placement agency, as well as a staffing agency that employed nurses directly. The director noted that contracts in the record indicate the petitioner’s client hospitals have the option to directly hire nurses from the petitioner; in such a circumstance, the nurse would not be employed by the petitioner. As such, the director found that the petitioner failed to establish that it intended to employ the beneficiary, and that it was offering a *bona fide*, full-time and permanent job opportunity to the beneficiary.

A U.S. employer desiring and intending to employ a foreign worker may file a petition for an employment-based immigrant classification on behalf of the foreign worker. 8 C.F.R. § 204.5(c). An employer is a qualifying entity with a location in the U.S. and a valid Federal Employer Identification Number (FEIN). 20 C.F.R. § 656.3 (defining “employer”). Employment is permanent, full-time work by an employee for an employer other than oneself. 20 C.F.R. § 656.3 (defining “employment”). Permanent means a relationship of continuing or lasting nature, as distinguished from temporary. *See* Section 101(a)(31) of the Act (noting that a relationship may be permanent even though it is one that may be dissolved eventually).

The record contains a “Letter of Intent to Employ Registered Nurses,” dated December 29, 2006.<sup>9</sup> The letter indicates a pay range of \$17.00 to \$28.00 per hour, “depending on the location of your employment.” The letter states:

Two Year Commitment: You are making a minimum two-year commitment to work at [REDACTED] commencing upon the time you arrive in the United States and securing your full RN License.

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<sup>9</sup> We note that this letter has indicia that cast doubt on its credibility. The text of the letter appears crisp and legible. However, portions of the petitioner’s letterhead, including its logo, appear faded and blurred; in addition, text that is in-line with the logo appear also crisp and easily read. This casts doubt on the authenticity of the letter. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Similarly, while the typewritten body of the letter appears clear and crisp, handwritten portions including the date, the beneficiary’s name, the date of acceptance, and the beneficiary’s signature, appear blurry and pixelated. Further, the beneficiary’s printed name above her signature contains her first two names, handwritten, followed by a typewritten initial, followed by her handwritten last name. The letter is not signed by any representative of the petitioner. The probative value of this letter is lessened by these issues.

Transferability of Employment: [REDACTED] may, at its option, find permanent employment for you with any of its client healthcare facilities. It is understood that such direct employment may require supplemental documentation to affirm your committed term of employment with that facility.

The letter indicates that the beneficiary's first 90 days of employment are probationary, and also states:

Certainly, it is our desire that if your performance remains acceptable and our need for your services still exists upon the completion of your employment commitment, we would welcome your continued employment within our [REDACTED] family.

The letter of intent indicates that the beneficiary will be entitled to petitioner paid services, "where applicable." These services include immigration services, consular fees, USCIS fees, Visa Screen processing, English and professional testing, an airline ticket to the United States "for relocation," and temporary housing for up to two months. The letter states that if the beneficiary were to terminate its employment prior to fulfilling the employment commitment, or if the beneficiary is terminated by the petitioner for cause, the beneficiary is liable to the petitioner for all recruitment costs, filing fees, travel costs, attorney's fees, and relocation fees.

The letter states that the petitioner's "offer for sponsorship/employment is contingent upon you complying with" a list of eight conditions. These conditions include multiple professional, experience, licensing, and health-related grounds. It also provides that the beneficiary must provide what the petitioner determines to be "satisfactory personal and professional references."

The letter also indicates: that the petitioner can withdraw its offer, at its own discretion, if it determines the beneficiary's work authorization is "unduly delayed;" that the employment is "at-will" but the petitioner wants the beneficiary "to commit to full-time employment at the prevailing wage for the position offered and the terms as stated;" and that this letter "is not a guarantee of employment by [REDACTED]."

The petitioner provided an affidavit from its Client Services Manager, dated May 28, 2009, which indicates that the petitioner utilizes two methods of contracting with healthcare facilities for the placement of nurses recruited by the petitioner. Under the first method, "Direct Placement," the petitioner states that "the visa sponsor is the client healthcare organization that will be employing the nurse." As described by the petitioner, it is not the employer of any nurses recruited under its Direct Placement option.

Under the second method, "Registry Staffing," the petitioner "employs the nurse directly and contracts their services out to its client healthcare organizations to provide staffing." The petitioner's Client Service Manager states the following:

█ does permit the healthcare organization to “buy-out” the obligation of the nurse to █ and employ the nurse directly once a nurse has worked for █ for a minimum of six months.

...

However, most of the client healthcare organizations want to employ the nurse directly at some point and permitting them to exercise an option for this contractual buy-out achieves that purpose.

...

This does not make █'s job offer temporary since █ intends to employ the nurse permanently and does not know whether its clients will exercise the option to buy-out the nurse's contractual obligation.

The record before the director contained two contracts between the petitioner and two hospitals, █. As noted in the Client Service Manager's affidavit, the contract with █ is for Direct Placement nurses only; as such, this contract cannot evidence the petitioner's intent to permanently employ the beneficiary, as the petitioner has asserted that any such placement would result in the hospital being the beneficiary's employer.

As stated in the affidavit, the contract with █ was for 100 nurses under the Direct Placement option, and 25 nurses under the Registry Staffing option. Thus, we must assess whether the petitioner's ability to place 25 nurses with █ under the Registry Staffing model evidences its intent to permanently employ the beneficiary in the United States.

The petitioner has submitted payroll records which counsel asserts evidence its direct employment of nurses. This includes an affidavit from the Vice President of Financial Services at Adventist █ and payroll evidence, Wage & Tax Registers, to document that the petitioner employed 38 nurses in 2007, and 20 nurses through the third quarter of 2008. The 2007 year-end report indicates that of the 38 employees to which the petitioner paid W-2 wages in 2007, 29 were terminated as of the end of the year, and 9 remained active. The 2008 report, which included up to September 19, 2008, indicates 49 total employees, with 33 being terminated as of the report, and 16 remaining active. A comparison of the “active” employees at the end of 2007, against those who were listed as active as of September 2008, indicates that of the nine nurses employed by the petitioner at the end of 2007, five of them remained employed by the petitioner by September 2008.

The petitioner's Articles of Organization state that its purposes are as follows: “to recruit nurses from international locations and place them in employment in the United States and to engage in any other lawful purpose except the business of acting as an insurer.”

Counsel argues the buy-out clause in the contracts between the petitioner and its client healthcare facilities are not relevant in determining whether the petitioner intends to offer the beneficiary full-time and permanent employment because such clauses “are not unusual” and are routinely included in staffing companies’ contracts with clients. Counsel also asserts that because the American Competitiveness in the 21<sup>st</sup> Century Act, 8 U.S.C. § 1154(j), permits an individual applying for permanent residence to “change employers once an adjustment application has been pending for at least six months,” employment that lasts at least six months should be considered to be permanent.

Counsel’s arguments fail to outweigh evidence in the record. The petitioner has provided a letter to document its “Intent to Employ Registered Nurses,” which purports to offer terms of employment. However, that letter explicitly states that the “Intent” letter “is not a guarantee of employment by [redacted].” Further, the letter appears to be a form letter, which states vague and indefinite terms: it does not state a rate of pay that the beneficiary could accept; it does not state whether the employment is full-time or part-time; and the letter does not state any locations where the beneficiary will be working. The offer is contingent on the petitioner deeming certain documents “satisfactory.”

The letter fails to state that it intends to employ the beneficiary on a full-time, permanent basis; however, the letter does state that the petitioner, “at its option,” can find permanent employment for the beneficiary with any of its client healthcare facilities. This suggests that the petitioner does not view its employment of the beneficiary as permanent. This is bolstered in that the petitioner’s letter of intent states the beneficiary is only conditionally employed during a 90-day probationary period.

The employment records provided by the petitioner support this conclusion. They indicate that at the end of 2007, the petitioner continued to employ only nine of 38 employees that it employed during that year, or less than 24% of its total W-2 workforce. Of the nine employees it continued to employ at the end of 2007, only five (or 13% of the total employees in 2007) remained in its employ by September of 2008.<sup>10</sup> Of the 40 new employees it hired between January 2008 and September 2008, only 11 (or less than 28%) remained employed by September. These records suggest that the petitioner employs few, if any, employees beyond a temporary period of employment. This is supported by the petitioner’s Client Services Manager, who stated that “most of the client healthcare organizations want to employ the nurse directly at some point.” As noted above, the petitioner was organized for the primary purpose of recruiting nurses from international locations and placing them for employment.

The petitioner failed to establish that the job opportunity is for full-time, permanent employment at a location in the United States. The director’s decision is affirmed. Beyond the decision of the director, the petition is unapproveable on additional grounds.

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<sup>10</sup> The petitioner has not identified which, if any, of the employees listed on its Wage & Tax Register are non-clinical staff; it is unclear from the record if the petitioner employs any administrative or executive staff to carry out its purpose. The only identified employees, the petitioner’s Client Services Manager and Executive Director, are not listed in its Wage & Tax Registers for 2007 or 2008.

B. Lack of a Valid Labor Certification

If the Schedule A occupation is a professional nurse, the petitioner must establish that the beneficiary has a Certificate from the Commission on [REDACTED] ( [REDACTED] a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or passed the [REDACTED] [REDACTED]. See 20 C.F.R. § 656.5(a)(2).

The petitioner must file a petition for a Schedule A occupation directly with USCIS, and the petition must include uncertified ETA Form 9089, completed in duplicate. See 8 C.F.R. §§ 204.5(a)(2) and (l)(3)(i); see also 20 C.F.R. § 656.15.

Petitions for Schedule A occupations must also contain evidence establishing that the employer provided its U.S. workers with notice of the filing of an ETA Form 9089 (Notice) as prescribed by 20 C.F.R. § 656.10(d), and a valid prevailing wage determination (PWD) obtained in accordance with 20 C.F.R. § 656.40 and 20 C.F.R. § 656.41. See 20 C.F.R. § 656.15(b)(2).

The petitioner's ETA Forms 9089 are signed by the petitioner's representative on April 4, 2007, and declared to be true and accurate.

As noted by the director, the petitioner does not have a specified location of employment for the offered position. The petitioner failed to list any worksite address on the ETA Form 9089; Parts H.1-2 ("primary worksite") of the labor certification are blank, and fail to list a location for the intended employment. The job opportunity described on the labor certification must be for "a job opening for employment at a place in the United States ..." and that employment must be by an employer "that proposes to employ a full-time employee at a place within the United States." See 20 C.F.R. § 656.3 (defining "job opportunity" and "employer," respectively).

The instructions to ETA Form 9089 inform the employer that they must "[e]nter the full address of the primary site or location where the work will actually be performed" in Part H.1 of the labor certification. See U.S. Department of Labor, *ETA Form 9089 – Instructions*, at p.5, <http://www.foreignlaborcert.doleta.gov/pdf/9089inst.pdf> (accessed July 15, 2014). A petition for a Schedule A occupation must be accompanied by a "fully executed uncertified [labor certification] in duplicate must accompany the petition." 8 C.F.R. § 204.5(l)(3)(i). The petitioner must demonstrate eligibility for the benefit requested at the time of filing, and the petition must be properly completed and filed with all initial evidence required by applicable regulations. 8 C.F.R. § 103.2(b)(1). The petition may be denied if the submitted petition and initial evidence fail to demonstrate the petitioner's eligibility. 8 C.F.R. § 103.2(b)(8)(ii).

The petition was submitted without a fully executed, uncertified labor certification, which is required initial evidence. Therefore, the petition also will be denied on this ground.

C. The Petitioner Failed to Meet the Regulatory Notice Requirements

Even if the petitioner had provided a fully executed labor certification that listed the primary worksite(s) for the job opportunity, the petition would be denied because the petitioner failed to document that it provided notice at those worksites. For the notice requirement, the employer must provide notice of the filing of an ETA Form 9089 to any bargaining representative for the occupation, or, if there is no bargaining representative, by posted notice to its employees at the location of the intended employment. *See* 20 C.F.R. § 656.10(d)(1).

The regulation at 20 C.F.R. § 656.10(d)(3) states that the notice shall:

- (i) State that 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.

Notices for Schedule A occupations must also contain a description of the job offered and the rate of pay. *See* 20 C.F.R. § 656.10(d)(6).

In cases where there is no bargaining representative, the notice must be posted for at least 10 consecutive business days, and it must be clearly visible and unobstructed while posted. 20 C.F.R. § 656.10(d)(1)(ii). The notice must be posted in a conspicuous place where the employer's U.S. workers can readily read it on their way to or from their place of employment. *Id.* In addition, the notice must be published "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." *Id.* The satisfaction of the notice requirement may be documented by "providing a copy of the posted notice and stating where it was posted, and by providing copies of all the in-house media" used to distribute the notice. *Id.*

In the instant case, there is no evidence in the record of a bargaining representative for the occupation. The petitioner did provide a copy of a notice posted at its headquarters, then located in Silver Spring, Maryland. A typewritten statement on the notice in the record states that it was "POSTED: January 25, 2007 to February 9, 2007." This posting period includes at least ten consecutive weekdays. The period of posting was between 30 and 180 days of the petition's filing on April 5, 2007.

The face of the notice indicates that it was posted at the following "POSTING LOCATION: Job Board." The notice fails to indicate the street address of where that "job board" was located. However, a letter from the petitioner's [REDACTED] dated March 12, 2007, states that the attached notice was "posted at our main office location since we do not know at which location the sponsored nurse will be working." The letter further states:

In addition, we have also posted the notice at the following hospitals where the nurse may be assigned:

- 1.
- 2.

We note that the only notice in the record states that it was posted from “January 25, 2007 to February 9, 2007.” The record does not contain any additional notices that were purportedly posted at the hospitals in Orlando, Florida and Washington, DC.

As discussed above, the petitioner does not have a specified location of employment for the offered position because the petitioner failed to list any worksite address on the ETA Form 9089. However, the posting notice states that the position is for employment “our of [the petitioner’s] location in Maryland.” This conflicts with the labor certification, which indicates no worksite location. Further, the petitioner’s contention that it posted this notice at a hospital in Orlando, Florida, would not comply with the regulatory requirements for notice, as the provided notice states the worksite location is Maryland, and not Orlando, Florida. See 20 C.F.R. § 656.10(d)(6). The job notice fails to indicate: (1) that there are variable job locations; (2) that relocation is required; or (3) other terms that would indicate that the job location is at any location other than the petitioner’s headquarters in Maryland. The notice of filing provided does not provide an accurate description of the job offered, as required by regulation. *Id.*

Therefore, the petition is also denied because the petitioner’s notice of filing fails to provide a sufficient description of the job offered.

#### D. The Job Opportunity Must be Supported by a Prevailing Wage Determination

In the instant case, the petitioner posted notice of the job opportunity at its headquarters in Maryland, and purportedly at hospitals in Orlando, Florida, and Washington, DC. However, as noted by the director and discussed further above, the petitioner does not have a specified location of employment. This is apparent throughout the record. The ETA Form 9089 failed to list a location for the intended employment. The posting notice provided only one possible location for intended employment, but was posted at two additional locations without specifying those locations on the notice. Finally, the contract of employment between the beneficiary and petitioner states that the actual place of employment may vary based up on the needs of the petitioner.

In Schedule A cases, the offer of employment must be definite as to location and job description. If a worksite location is variable or subject to change, this job requirement must also be described on the labor certification and notice of filing. This conclusion is further required by the fact that when the employer seeks to fill vacancies in a variety of locations it would require multiple prevailing wage determinations in accordance with 20 C.F.R. § 656.40. The petitioner must obtain a PWD and file the petition and accompanying ETA Form 9089 with USCIS within the validity period specified on the PWD. See 20 C.F.R. § 656.40(c). The instant petition contains a PWD from the State of

Maryland showing the prevailing wage for [REDACTED] Maryland. However, the notice purportedly was posted in both Washington, D.C. and Orlando, Florida also. The petitioner did not provide a prevailing wage determination that would be valid for its Florida location despite this being an intended work location at which it posted its notice of filing.

A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

The petitioner failed to provide proper notice in accordance with 20 C.F.R. § 656.10(d)(1) and failed to submit a valid prevailing wage determination in accordance with 20 C.F.R. § 656.40. The petition will remain denied because the petitioner has not established that there is and continues to be a *bona fide* job offer of employment.

#### E. Labor Certification Must State the Petitioner's Actual Minimum Requirements

Also beyond the director's decision, the petition will be denied because it fails to state the petitioner's actual minimum requirements for the position offered, and the petitioner's notice of filing conflicts with the job requirements specified on the labor certification. The petitioner must provide a fully executed ETA Form 9089 to USCIS. 8 C.F.R. § 204.5(l)(3)(i). The petitioner describes the job opportunity in Part H of ETA Form 9089. The petitioner's description of the job opportunity must represent its actual minimum requirements for the position offered. *See* 20 C.F.R. § 656.17(i)(1) ("The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity."). We may not ignore a term of the labor certification, nor may we impose additional requirements. *See 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).

Part H.4 of the petitioner's labor certification indicates that the position offered requires, at a minimum, an associate's degree in nursing. No experience is required by the terms of the labor certification, and the petitioner indicates in Part H.8 that it will not accept any alternate combinations of education and experience.

However, the petitioner's notice of filing states the following job requirements:

Completion of high school plus recognized nursing program resulting in bachelor's degree, associate's degree or nursing diploma.

A nursing diploma is a level of education less than an associate's degree. *See e.g., Katy Katz, Rasmussen College, Licensed Practical Nurse: Degree vs. Diploma*, at <http://www.rasmussen.edu/degrees/nursing/blog/licensed-practical-nurse-degree-diploma> (accessed July 14, 2014) (noting that nursing diplomas can be completed in as little as 12 months since they

have fewer credit requirements than an associate's degree, and mainly focus on job-specific nursing skills); Rasmussen College Florida, *2013-2014 Course Catalogue*, at p.27-28 [http://www.rasmussen.edu/pdf/course\\_catalog/2013\\_2014\\_FL\\_catalog.pdf](http://www.rasmussen.edu/pdf/course_catalog/2013_2014_FL_catalog.pdf) (accessed July 14, 2014) (indicating an associate's degree in nursing requires 103 credits, while a practical nursing diploma requires 62 credits).

The petitioner's notice of filing indicates that it would accept an applicant with a nursing diploma, a level of education that is less than the stated minimum level of education on the labor certification, which is an associate's degree in nursing. The petitioner's notice of filing conflicts with the minimum requirements for the position offered as attested to by the petitioner on the labor certification.

Therefore, the petition will be denied because the petitioner failed to state the actual minimum requirements for the position offered on the labor certification.

### III. CONCLUSION

The director's decision, denying the petition on the ground that the petitioner failed to establish that a *bona fide* job opportunity for full-time, permanent employment at a location in the United States existed, will be affirmed. The petitioner failed to document that it was offering a *bona fide* job opportunity for full-time, permanent employment at a location in the United States. Beyond the decision of the director, the petition will be denied because it is not supported by a valid ETA Form 9089, the petitioner failed to comply with the notice requirements, the petitioner failed to provide a valid prevailing wage determination, and the labor certification does not state the actual minimum requirements for the position offered.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.