



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 17 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not file any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a dental laboratory. On May 15, 2014, it filed the instant Form I-140, Immigrant Petition for Alien Worker, seeking to employ the beneficiary permanently in the United States as a dental lab technician and to classify him 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). Under this statutory provision preference classification may be granted to qualified immigrants who are capable of performing skilled labor that requires at least two years training or experience, is not of a temporary nature, and for which qualified workers are not available in the United States.

The petition was accompanied by a copy of an ETA Form 9089, Application for Permanent Employment Certification, which had been filed with the U.S. Department of Labor (DOL) on October 13, 2006, and certified by the DOL (labor certification) on October 20, 2006. The copied ETA Form 9089 contains the signatures of the petitioner's president, [REDACTED] the beneficiary, and the preparer of the application, attorney [REDACTED] all dated in April 2014.

The labor certification is a copy of the original ETA Form 9089 that was filed along with the petitioner's initial Form I-140 at the Nebraska Service Center on December 11, 2006, except that the three signatures on the original ETA Form 9089 were dated in November 2006. The earlier I-140 petition ([REDACTED]) was approved by the Director on November 27, 2007. In subsequent proceedings, however, the Director invalidated the labor certification on December 24, 2013, and revoked the approval of the petition on February 26, 2014. The Director found that the signatures of the petitioner and the beneficiary on the ETA Form 9089, as well as the petitioner's signature on the Form I-140, were forged by the petitioner's attorney, Mr. [REDACTED]. Thus, neither the labor certification nor the petition contained the employer/petitioner's signature as required by applicable regulations. As a result, the ETA Form 9089 was not a valid labor certification and the Form I-140 was not a properly filed petition, both because it was not accompanied by a valid labor certification and because it lacked the petitioner's signature. In filing the instant Form I-140 with the copied ETA Form 9089 the petitioner's declared purpose was to remedy the failings of the previous documents by furnishing the petitioner's actual signature on both documents and the beneficiary's signature on the latter document.¹

On January 8, 2015 the Director denied the instant petition, finding that it is not accompanied by a valid labor certification and was thus not properly filed.

The petitioner filed a timely Form I-290B, Notice of Appeal or Motion, accompanied by a brief from the attorney [REDACTED] and supporting materials, all which has been forwarded to our office. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145

¹ In an addendum to the new Form I-140 the petitioner requested that its appeal of the Director's revocation decision, filed on March 14, 2014 (receipt number [REDACTED]), be withdrawn. In accordance with this request, we issued a decision on March 19, 2015, dismissing the appeal based on its withdrawal by the petitioner.

(3d Cir. 2004). In accord with the Director's decision, we find that the instant petition is not accompanied by a valid labor certification. Therefore, the petition may not be approved.

The brief submitted with the Form I-290B asserts that the denial of the I-140 petition was due to the ineffective assistance of the petitioner's prior counsel, [REDACTED].² Regardless of the truth of this assertion, it is irrelevant in our current adjudication because applicable regulations preclude the approval of the instant petition.

The regulation at 8 C.F.R. § 204.5(1)(3) states, in pertinent part, that:

[e]very petition under this classification [skilled workers, professionals, and other workers] must be accompanied by an individual labor certification from the Department of Labor

The regulation at 20 C.F.R. § 656.17(a) states, in pertinent part, that:

. . . an employer who desires to apply for a labor certification on behalf of an alien must file a completed Department of Labor *Application for Permanent Employment Certification* form (ETA Form 9089) Applications submitted by mail must contain the original signature of the employer, alien, attorney, and/or agent when they are received by the application processing center. DHS [Department of Homeland Security] will not process petitions unless they are supported by an original certified ETA Form 9089 that has been signed by the employer, alien, attorney and/or agent.

In this case, the labor certification application filed with the prior Form I-140 (LIN 07 051 52376) did not comply with the above regulation because it did not contain the original signatures of the employer and the alien. Therefore, the approval of the immigrant petition filed with U.S. Citizenship and Immigration Services (USCIS) was properly revoked for lack of a valid labor certification. If a petition that does not comply with the technical requirements of the law is improperly approved, USCIS may subsequently revoke the approval when the error is recognized. *See Spencer Enterprises, Inc. v. United States*, 299 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003). Furthermore, in accord with 20 C.F.R. § 656.17(a) USCIS properly invalidated the labor certification after determining that the failure to provide original signatures was based on fraud.

The ETA Form 9089 submitted by the petitioner with the instant Form I-140 is a copy of the original labor certification that was invalidated by USCIS on December 24, 2013. While the employer and

² While the Form I-290B and the legal brief were filed by the attorney [REDACTED], no Form G-28 (Notice of Entry of Appearance as Attorney or Representative) was filed by Mr. [REDACTED] as evidence that he has been retained by the petitioner as counsel in this proceeding. Accordingly, Mr. [REDACTED] will not be recognized in this decision as counsel of record. While [REDACTED] did file a Form G-28, along with the instant petition, which was co-signed by the petitioner in April 2014, it is apparent that Mr. [REDACTED] no longer serves as counsel in this proceeding. At the present time, therefore, the petitioner has no representative of record.

the alien have now added authentic signatures to the document, seven and a half years after its review by the DOL, that action did not annul the invalidation of the labor certification by USCIS. The original labor certification, in other words, was not “re-validated” *ex post facto* by the signatures. The labor certification remains invalidated and the petitioner’s new Form I-140 is not “supported by an original certified ETA Form 9089” as required in 20 C.F.R. § 656.17(a).

In summation, the ETA Form 9089 filed with the instant petition is not a valid labor certification. In accord with the regulation at 8 C.F.R. § 204.5(1)(3), therefore, the instant petition must be denied because it is not accompanied by a valid labor certification from the DOL. Accordingly, the Director’s denial of the petition will be affirmed, and the appeal dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.