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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

B6

[redacted]

FEB 02 2004

File: EAC 02 160 51706 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
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:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an acute care hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. 656.10, Schedule A, Group I. The director determined that the notice of filing the Application for Alien Certification was not provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

On appeal, the petitioner submits a brief and additional evidence.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), 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, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a registered nurse. Aliens who will be employed as professional nurses are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.10 with respect to which the Director of the United States Employment Service 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 regulation at 20 C.F.R. § 656.22(a) provides in pertinent part that an employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA 750 at Part A) in duplicate with the appropriate CIS office. 20 C.F.R. § 656.22(b) further provides that:

> (b) The Application for Alien Employment Certification shall include:
>
> (1) Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form. ...

> (2) Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

In this case, Form I-140 and the Application for Schedule A labor certification were filed on April 2, 2002, and did not include the evidence described in sub-paragraph 2 above. On June 30, 2002, the director requested that the petitioner submit a copy of the letter from the employer to the bargaining representative or a copy of the job offer notice that was posted at the facility or employment location. In response, the petitioner submitted a copy of a job notice which was posted from June 5, 2002, until June 15, 2002, dates which are after the filing date of the petition and the labor certification application.

The director denied the application based on the petitioner's failure to provide acceptable evidence that the position had been posted in accordance with 20 C.F.R. § 656.20(g)(3). The director noted that the petitioner responded with a copy of the job posting, but failed to submit evidence that it had been posted prior to the filing of the Alien Employment Certification.

On appeal, the petitioner states, in pertinent part that:

> Sibley Memorial Hospital has no bargaining unit. To-date, the job offer notice is still posted conspicuously at the Human Resources Department. [The beneficiary] has consented to complete another notice of filing of the Application for Alien Employment Certification. Form ETA-750, parts A&B are enclosed for your further review.

8 C.F.R. § 103.2(b)(12) states, in pertinent part:

> An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility *at the time the application or petition was filed.*

(Emphasis supplied). The regulations require that the notice be posted for at least ten consecutive days and evidence of such posting be submitted with the Application for Alien Employment Certification. As there is no evidence that the job notice was timely posted, the petitioner has not complied with the instructions stipulated in the regulations. Consequently, the petition may not be approved.

This denial is without prejudice to the filing of a new petition accompanied by the appropriate documentary evidence and fee.

ORDER: The appeal is dismissed.