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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 10 2004
SRC 01 050 53458

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a recruitment firm. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The petitioner submitted only Part B of the Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140).

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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 or seasonal nature, for which qualified workers are not available in the United States.

Eligibility in this matter hinges on the qualifications of the beneficiary for the position at the priority date. Employment-based petitions depend on priority dates. The priority date for Schedule A occupations is established when the I-140 is properly filed with Citizenship and Immigration Services (CIS), formerly the Service or the INS. 8 C.F.R § 204.5(d). The petition must be accompanied by the documents required by the particular section of the regulations under which it is submitted. 8 C.F.R. § 103.2(b)(1). The priority date of the petition in this case is December 5, 2000.

The petitioner initially submitted insufficient evidence of the ability to pay the proffered wage and of the identity of Professional Placement Resources, Inc. (Resources), as the petitioner. Instead, PPR Travel, Inc. (Travel) offered the agreement for employment with the beneficiary, executed on or about July 9, 2000. In a request for evidence dated May 16, 2001 (RFE1), the director required the contract between the petitioner and health care organizations where the beneficiary would be placed, information about the beneficiary's salary, terms, and conditions of employment, and certain other data. That evidence pertained to the petitioner's status as a United States employer, to its ability to pay the proffered wage, and to its posting of the notice of the proffered position pursuant to 20 C.F.R. § 656.20(g). An additional request for evidence, dated August 7, 2001 (RFE2), exacted evidence that Resources was a subsidiary of Travel, as well as Travel's 2000 federal income tax return and quarterly tax returns.

The petitioner introduced corporate and business documents to establish that Resources changed its name to Travel in 1997. Despite the name change, Resources's name appeared on documents affecting the beneficiary. Resources continued to sign agreements with the healthcare organization presumably employing the beneficiary. *See* unattached signature pages (two sheets), dated January 8 and 11, 2001, between Resources and Baptist Health Systems of Florida. In July 2001, Resources, the petitioner on the visa petition, incorporated again and operated as a corporation distinct from Travel. However, Travel executed the employment agreement with the beneficiary on July 9, 2000. Travel, also, submitted evidence of the ability to pay the proffered wage in response to RFE1 and RFE2, after the reincorporation of Resources.

The director relied on provisions that a petitioner must submit and sign an application. 8 C.F.R. §§ 103.2(a)(1) and (2). The petition must include the required labor certification and supporting documentation. 8 C.F.R. §§ 204.5(a)(2) and (3). Any United States employer desiring and intending to employ an alien may execute an I-140, and the date of its filing with CIS establishes the priority date in respect to a Schedule A occupation. 8 C.F.R §§ 204.5(c) and (d). The director considered that the evidence did not fully establish either Resources or Travel as the petitioner at the priority date. 8 C.F.R. § 103.2(b)(12). The director determined that the facts, as submitted, precluded the determination of a material fact, namely, the identity of the petitioner. 8 C.F.R. § 103.2(b)(14). In that regard, the director noted regulations requiring that an employer file Form ETA 750 with CIS for Schedule A occupations. 20 C.F.R. § 656.22(a). The Form ETA 750 submission must

include Part A, the job offer description. 20 C.F.R. § 656.22(b)(1). The record of proceedings, as presently constituted, contains only Part B.

The director, in denying the petition, concluded:

> The petitioner has not established that it is a US employer as defined by regulation, that it has properly filed an ETA-750 with [CIS] for an occupation identified as a shortage occupation by the DOL [Department of Labor], and that it has the ability to pay the stated wage, because corporate identity and responsibility for contracts and financial resources is ambiguous.

Substituted counsel appealed on January 14, 2002 and stated:

> I am sending a brief and/or evidence to [the AAO] within 30 days. See attached letter.

Counsel's attached letter also stated that a brief and supporting evidence would be forthcoming. More than the time allowed and requested has elapsed. 8 C.F.R. §§ 103.3(a)(2)(i) and (viii). Counsel has not identified, specifically, any erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.