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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

**PUBLIC COPY**



**U.S. Citizenship and Immigration Services**

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FILE:

SRC 06 181 51729

Office: TEXAS SERVICE CENTER Date:

**JUL 20 2009**

IN RE:

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:

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.

  
John H. Grissom  
Acting Chief, 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. As the petition was not properly filed with a valid Form ETA 750, the AAO lacks jurisdiction to decide the appeal. The appeal will be rejected.

The director determined that the petitioner had not submitted an approved Form ETA 750 Application for Alien Employment Certification or Form 9089, Application for Permanent Employment Certification, as required by 8 C.F.R. § 204.5(1)(3)(i).

8 C.F.R. § 103.1(f)(3)(iii), as in effect on February 28, 2003, stated, in pertinent part:

*Appellate Authorities.* In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:

(B) Petitioner for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

Without information found only in the Form ETA 750 labor certification, it is not possible for U.S. Citizenship and Immigration Services (USCIS) to either fairly review or adjudicate this matter. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1(2003).

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

*Initial evidence –(i) Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.

The petitioner has not provided an original or duplicate original of a certified Form ETA 750. According to prior counsel's letter dated June 12, 2003, she never received the labor certification, although there is a letter from DOL dated May 2, 2003, stating that the labor certification application was certified on July 11, 2002 and was mailed to the attorney of record (prior counsel). In addition, current counsel has submitted a copy of the first page of the labor certification showing the case number and the priority date of January 18, 1996. The director stated in her decision that she requested a duplicate original labor certification from DOL but was told that the labor certification was not available.

Although the director's decision advised the petitioner that an appeal was available, that information was in error. Again, the authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1(2003). See 8 C.F.R. § 103.1(f)(3)(iii), as in effect on February 28, 2003.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

The petition was improperly filed. The petitioner has the burden of proof in these proceedings. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

**ORDER:** The appeal is rejected. As the petition was improperly filed under 8 C.F.R. § 204.5(1)(3), the AAO lacks jurisdiction to decide the appeal.