



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20579623

Date: NOV. 09, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a healthcare management business, seeks to employ the Beneficiary as an operating room nurse under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

This petition is for a Schedule A occupation. A Schedule A occupation is one codified at 20 C.F.R. § 656.5(a) for which the 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, Application for Permanent Employment Certification, from the DOL prior to filing the petition with USCIS. Instead, the petition is filed directly with USCIS with an uncertified ETA 9089 in duplicate, and evidence that notice of the filing was provided. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15.

The Petitioner stated the minimum requirements for the offered position of operating room nurse as a bachelor's or foreign equivalent degree in nursing and five years of post-baccalaureate experience, or in the alternative, a master's or foreign equivalent degree in nursing or a related field. The original petition did not include evidence that the notice of filing was posted or evidence that the Beneficiary possessed an advanced degree or five years of post-baccalaureate experience required for the position and the requested classification. In response to a request for evidence, the Petitioner submitted a notice of filing that did not reflect the actual dates of posting. The Petitioner did not submit evidence of the Beneficiary's advanced degree or experience.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that it properly posted the required notice of filing, or that the Beneficiary possessed the minimum experience required for the offered position and for the requested classification.

On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that it would submit a brief and/or additional evidence to us within 30 days of filing the appeal. No additional evidence or brief has been received to date.

The Petitioner submitted a statement with the appeal. The Petitioner states that the denial was based on three grounds: 1) the improper posting notice; 2) lack of evidence of the Beneficiary's experience, and; 3) its ability to pay the proffered wage to this Beneficiary and the beneficiaries of its other petitions. It states that it will submit additional evidence to address the first two grounds for denial. It also states that the Director misapplied the law concerning a petitioner's ability to pay multiple beneficiaries, specifically that it need only establish its ability to pay this Beneficiary and beneficiaries of its other petitions that it actually employed.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part, "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The Petitioner here has not specifically identified erroneous conclusions of law or statements of fact in the decision notice. The only error of law that the Petitioner addresses, the ability to pay the proffered wage, is not, in fact, a basis for denial in the Director's decision. We are summarily dismissing the appeal because it does not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).