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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**B6**

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

[REDACTED]

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

**DEC 13 2003**

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:

[REDACTED]

**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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a home health care service. It seeks to employ the beneficiary permanently in the United States as a registered nurse in California. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10(a), commonly referred to as Schedule A. The director determined that the petitioner had not established that the beneficiary met the job qualifications on the priority date of the petition.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3) of the Act states, in pertinent part:

(A) In general. - Visas shall be made available . . . to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Furthermore, 8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

20 C.F.R. § 656.10(a)(2) states that, professional nurses are among those qualified for Schedule A designation, if they have passed the Commission on Graduates of Foreign Nursing

Schools (CGFNS) Examination or hold a full and unrestricted license to practice professional nursing in the state of intended employment.

20 C.F.R. § 656.22(c)(2) states,

An employer seeking a Schedule A labor certification as a professional nurse (§ 656.10(a)(2) of this part) shall file, as part of its labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was eligible for the proffered position on the filing date of the petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition was filed on September 3, 2002. The Form ETA 750 specifies that the position requires a bachelor's degree in nursing and two years of nursing experience. In addition to those requirements, the petitioner must demonstrate that, as of the date of filing, the beneficiary met the qualifications imposed by the regulations.

With the petition, counsel submitted a copy of the beneficiary's Interim Permit to practice nursing under the direction of a registered nurse. Counsel submitted no evidence, however, that the beneficiary had passed the CGFNS Examination or held an unrestricted license to practice nursing. Therefore, on October 17, 2002, the California Service Center requested additional evidence. The petitioner was specifically requested to submit evidence that the beneficiary had passed the CGFNS Examination or held a full and unrestricted license to practice nursing in California.

In response, counsel submitted a letter, dated January 7, 2003. In that letter counsel stated that the beneficiary had taken the National Council Licensure Examination offered by the California Board of Registered Nursing (NCLEX-RN), on December 26, 2002, but that the results were not yet available.

The Director, California Service Center, determined that the evidence submitted did not demonstrate the beneficiary's eligibility for the proffered position on the priority date and denied the petition on January 31, 2002.

On appeal, counsel submits a copy of a letter, dated January 7,

2003, from the California Board of Registered Nursing. That letter notified the beneficiary that she had passed the NCLEX-RN Examination. Counsel argues that this notification demonstrates that the beneficiary is qualified for the proffered position.

As was stated above, however, the petitioner must demonstrate that the beneficiary was qualified for the proffered position on September 3, 2002, the date the petition was submitted. The petitioner has demonstrated that the beneficiary took the NCLEX-RN exam on December 26, 2002, and that she was informed, on January 7, 2003, that she had passed that examination. The record contains no evidence, however, that the beneficiary had passed the CGFNS Examination or possessed a license to practice nursing in California when the petition was submitted.

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.