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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: WAC 01 150 54226

Office: CALIFORNIA SERVICE CENTER

Date: DEC 18 2003

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:



Identifying data deleted to prevent identity-suspected invasion of personal privacy

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
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 case will be remanded for further consideration.

The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification. 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 single sentence as the basis for the appeal. No further information, argument, or documentation has been received from the petitioner or from counsel.

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(1)(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. 656.22(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 (CGFNS) 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 March 26, 2001.

With the petition counsel provided a letter, dated August 19, 2000, from the Commission on Graduates of Foreign Nursing Schools indicating that the beneficiary passed the CGFNS examination which she took July 12, 2000. That letter states that the commission would issue a certificate upon receipt of an acceptable Test of English as a Foreign Language score. That letter states at the bottom, "NB: This letter is not a CGFNS Certificate and should not be presented as such."

On August 10, 2001, the California Service Center requested additional evidence. The Service Center requested either evidence that the beneficiary had passed the CGFNS examination or evidence that the beneficiary held a full and unrestricted license to practice professional nursing in the state of intended employment.

In fact, the beneficiary had previously provided evidence that the beneficiary had passed the CGFNS examination on June 12, 2000. The August 19, 2000 letter clearly states that it is not a CGFNS certificate, but also clearly states that the beneficiary passed the CGFNS examination.

In response to the request of August 10, 2001, counsel submitted a copy of the June 12, 2000 letter stating that the beneficiary had passed the CGFNS examination taken on July 12, 2000.

The director determined that the evidence submitted did not demonstrate that the beneficiary passed the CGFNS examination and did not demonstrate that the beneficiary has an full and unrestricted license to practice professional nursing in the state of intended employment.

On appeal, counsel stated,

Ms. Nisperos passed the CGFNS exam. CGFNS is mailing the certificate to our office, (sic) however, it may not reach us on time to be able to submit prior to your deadline. We will submit a copy of her CGFNS once we receive it.

The CGFNS certificate is not in evidence. However, 20 C.F.R. 656.22(c)(2) does not require that the petitioner submit the beneficiary's CGFNS certificate, but merely evidence that she passed the CGFNS examination. The letter that the petitioner submitted, while not a CGFNS certificate, makes clear that the beneficiary took that examination on July 12, 2000 and, on August 19, 2000, was duly notified that she had passed it.

ORDER: The petition is remanded for further consideration and action in accordance with the foregoing.