

PUBLIC COPY

U.S. Department of Homeland Security

Bureau of Citizenship Services and Immigration Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

B6

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

[REDACTED]

File: [REDACTED]

Office: Nebraska Service Center

Date:

JUN 19 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]

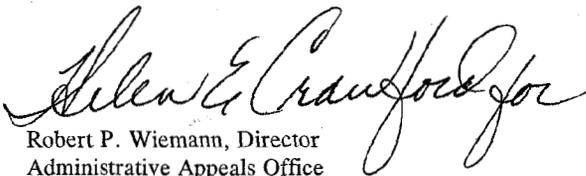
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a nursing and rehabilitation center. 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 additional evidence.

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.

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.

Eligibility in this matter hinges on the beneficiary's eligibility 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 December 19, 2001. The Form ETA 750 specifies that the position requires an "Illinois Nursing License (R.N.) or certification from CGFNS (Commission on Graduates of Foreign Nursing Schools."

With the petition, counsel submitted a form letter from the CGFNS indicating that the beneficiary had passed the CGFNS Qualifying Examination and that CGFNS would issue a certification upon receipt of a passing score on an acceptable Test of English as a Foreign Language. That letter states "NB: This letter is not a CGFNS Certificate and should not be presented or accepted as such."

Because the evidence submitted did not demonstrate that the beneficiary had the requisite license or certification the Director, Nebraska Service Center, requested additional evidence on March 19, 2002. Specifically, the Service Center requested a copy of the beneficiary's CGFNS Certificate or license to practice nursing in Illinois.

In response, the petitioner's operations coordinator submitted a letter, dated May 30, 2002, which stated that the beneficiary had not yet received her CGFNS Certificate.

On August 9, 2002, the Director, Nebraska Service Center, denied the petition, finding that the evidence submitted did not demonstrate the beneficiary's eligibility for the proffered position on the filing date.

On appeal, counsel submitted the beneficiary's CGFNS Certificate, issued June 26, 2002, and asked that the petition be approved.

The filing date was December 19, 2001. The beneficiary's CGFNS Certificate was issued June 26, 2002. The evidence submitted does not demonstrate that the beneficiary was eligible for the proffered position on the filing date. Therefore, the petition may not be approved.

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.