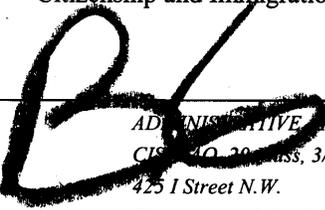


U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
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invasion of personal privacy


ADMINISTRATIVE APPEALS OFFICE
CIS 40, 20, 3/F
425 I Street N.W.
Washington, D.C. 20536



OCT 27 2003

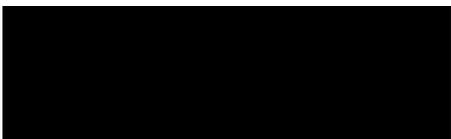
File: EAC 01 222 52066 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



PUBLIC COPY

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 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, Vermont Service Center, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on the petitioner's motion to reopen. The motion will be granted, the previous decisions of the director and the AAO will be withdrawn, and the petition will be approved.

The petitioner is a medical center. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The petitioner submitted the Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140).

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.

Eligibility in this matter hinges on the qualifications of the beneficiary for the position at the priority date. Employment-based petitions depend on priority dates. The priority date for Schedule A occupations is established when the I-140 is properly filed with CIS (formerly the Service or INS). 8 C.F.R. § 204.5(d). The petition must be accompanied by the documents required by the particular section of the regulations under which it is submitted. 8 C.F.R. § 103.2(b)(1). The priority date is that of the filing of the I-140 in Schedule A occupations, viz., April 30, 2001 in this instance.

In a request for evidence (RFE) dated August 25, 2001, the director required evidence of the petitioner's ability to pay the proffered wage, of the beneficiary's educational qualifications, and her license to practice nursing in the State of intended employment. See 20 C.F.R. § 656.10, Schedule A, Group I.

In response, former counsel provided the petitioner's tax returns and the beneficiary's license examination results and transcript of college courses.

The director determined that the petitioner's evidence of test results did not establish success in the appropriate examination and that no evidence showed that the beneficiary had a full and

unrestricted license from the New Jersey Board of Nursing Registration (Board). Though the RFE had made no requirement for evidence to establish the petitioner's notice of filing of Form ETA 750 (Form ETA 750 posting) to the bargaining representative or employees, the director found that the posting was not satisfied. The Director concluded that, for all these reasons, the petition must be denied, in a decision dated November 7, 2001.

Former counsel filed the appeal December 10, 2001. It included a copy of the petitioner's Form ETA 750 posting. Counsel buttressed the beneficiary's successful license examination results in the test, commonly called NCLEX-RN, as sufficient to meet regulatory requirements. In addition, the appeal reproduced the transcript of college courses.

The AAO dismissed the appeal, in a decision dated June 18, 2002 (AAO decision). Its reasoning rested on the limited ground that the Form ETA 750 posting, from November 13 through December 7, 2001, was over eight (8) months after the filing of the I-140.

Present counsel recites difficulties of proof associated with a substitution of attorneys and states in the timely motion to reopen, received July 17, 2002:

The employer had no [verbatim] record of the posting on file. Instead, the employer advised that jobs were posted each week at [the petitioner's place of business] and, on July 3, 2002, provided proof of its 3/9/01 posting, marking the section in which the beneficiary was eventually placed (Exhibit C).

The evidence in Exhibit C on appeal appears to be a record kept in the normal course of business. It establishes a timely Form ETA 750 posting. A supplementary clarification confirms that, indeed, Exhibit C relates to the I-140 for the beneficiary's position.

The nurse recruiter of the petitioner [MCP] verified the posting, in a letter dated July 3, 2002, advising that:

I wanted to be clear about the hiring process of our Nurse Residents at [MCP]. Per our offer of employment into the residency program all nurses are guaranteed a position at [MCP] upon completion of the Residency program. All positions are posted on a weekly basis in the Human Resource department.

The record does not contain any derogatory evidence that would persuade CIS to doubt the credibility of the petitioner's verification. The AAO decision left no other issue to resolve.

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 met that burden.

ORDER: The motion to reopen is granted, the previous decisions of the director and the AAO are withdrawn, and the petition is approved.