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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



File: WAC 01 276 51414 Office: CALIFORNIA SERVICE CENTER Date:

SEP 15 2003

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

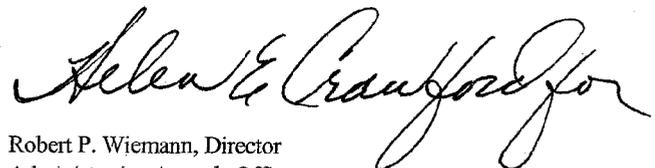
INSTRUCTIONS:

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 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a health care provider. 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), establishing the priority date under blanket certification on July 23, 2001.

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 the Bureau (formerly the Service). 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 of the petition in this case is July 23, 2001.

The petitioner initially submitted insufficient evidence of the beneficiary's qualifications for the position. In a request for evidence dated November 30, 2001, (RFE), the director required a full and unrestricted license to practice professional nursing in the State of intended employment or the certificate that the beneficiary had passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination. See 20 C.F.R. § 656.10, Schedule A, Group I.

In response, counsel provided a document generated on February 21, 2002, namely, "On-line Professional Licensing, Personal Information, To edit your address of record..." This extract from the Internet reported registered nursing license number RN594879 for the beneficiary, expiring June 30, 2003, but no date of issue. It appears to be an address report form.

The California Department of Consumer Affairs, Board of Registered Nursing (California Board), issued an Interim Permit dated April 3, 2001 (interim permit) and a Temporary Registered Nurse License dated January 4, 2002 (temporary license) in the name of the beneficiary.

The director determined that the petitioner's evidence did not show that the beneficiary either passed the CGFNS examination or had a full and unrestricted license. The Director concluded that the beneficiary did not qualify for certification under Schedule A and denied the petition.

Counsel, on appeal, interprets the director's decision as an absurd finding that no license may be full and unrestricted if it has an expiration date, resulting in the denial of all Schedule A cases. The statute, however, relates eligibility for the benefit to the status of the license at the date of the I-140 petition for classification, the priority date. See § 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), *supra*.

Only the interim permit existed at the priority date. It was expressly restricted by the prospective results of an examination and was not a full and unrestricted license.

A petitioner must establish the elements for the approval of the petition at the priority date. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner's evidence fails to establish when the California Board granted the beneficiary's full and unrestricted nursing license, if any. The California Board temporary license and address report, in any event, evidence neither a full and unrestricted license nor a certificate of the CGFNS examination before the priority date.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In passing, counsel states on appeal that the petitioner submitted the beneficiary's registered nurse license, which allows her to work fully and unrestricted in the State of California. The record does not contain it.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-*

Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The petition was not accompanied by evidence that the beneficiary qualified for classification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I, as of the priority date of the petition. As the petitioner has not complied with the instructions stipulated in the Department of Labor regulations, at the time of the filing of the petition, 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.