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Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**



File: WAC 00 123 50643 Office: CALIFORNIA SERVICE CENTER

Date: APR 09 2004

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:



**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.

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 sustained.

The petitioner is a rehabilitation and nursing center. It seeks to employ the beneficiary permanently in the United States as a registered nurse. 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 qualified for Schedule A labor certification designation as of the priority date of the petition and denied the petition accordingly.

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(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.

Department of Labor regulations at 20 C.F.R. § 656.10(a)(2) state 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 (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, on the filing date of the petition, the beneficiary qualified for Schedule A designation. Here, the petition was filed on March 28, 2000.

With the petition, counsel submitted a letter, dated September 29, 1999, from the Commission on Graduates of Foreign Nursing Schools (CGFNS) which states that the beneficiary passed the CGFNS examination, which she took on August 11, 1999. The letter also states, "This letter is not a CGFNS Certificate and should not be presented or accepted as such."

On October 23, 2000, the California Service Center requested evidence that the beneficiary had passed the CGFNS examination or held an unrestricted license to practice professional nursing in the state of intended employment.

In response, counsel submitted a copy of the September 29, 1999 letter from the CGFNS. Counsel observed that the letter states that the beneficiary passed the CGFNS examination.

The director denied the petition on February 13, 2001. The director stated that contrary to the admonition on the September 29, 1999 CGFNS letter, the petitioner is attempting to present that letter as a CGFNS certificate.

On appeal, counsel states that the CGFNS letter states that the beneficiary passed the CGFNS examination, and is competent and sufficient evidence of that assertion. Counsel also submits a copy of the beneficiary's CGFNS certificate, issued June 23, 2000.

The CGFNS certificate was issued after the priority date of the petition. As such, it is not sufficient to show that the beneficiary was qualified for Schedule A treatment on the priority date.

The regulation at 20 C.F.R. 656.22(c)(2) does not require that the petitioner demonstrate that the beneficiary received her CGFNS certificate prior to the priority date, but merely evidence that she had passed the CGFNS examination. The letter that the petitioner submitted, while not a CGFNS certificate, makes clear that the beneficiary took that examination on August 11, 1999 and, on September 29, 1999, was duly notified that she had passed it.

The petitioner has overcome the sole reason for which the petition was denied. 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 appeal is sustained.