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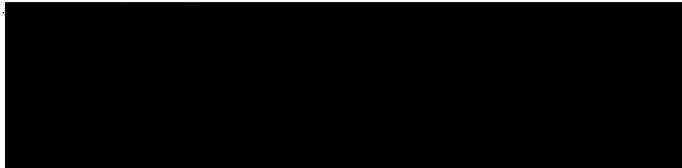
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship
and Immigration
Services



File: WAC 99 220 50001 Office: CALIFORNIA SERVICE CENTER

Date: APR 13 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: SELF-REPRESENTED

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

Robert P. Wiemann, Director
Administrative Appeals Office

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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 dismissed.

A Form G-28, Entry of Appearance, was filed in this matter. On that form, the petitioner's ostensible representative does not indicate that he is an attorney but states that he is the petitioner's "Authorized Representative." That ostensible representative's name, however, does not appear on CIS's list of accredited representatives. As such, the file contains no evidence that the petitioner's ostensible representative is qualified and authorized to represent the petitioner. All representations will be considered, but the decision will be furnished only to the petitioner.

The petitioner is a nursing facility. 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 met the job qualifications on the priority date of the petition and denied the petition accordingly.

On appeal, counsel submits a statement 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.

20 C.F.R. § 656.10(a)(2) states 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 (CGFN) 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 August 9, 1999.

With the petition, the petitioner submitted two letters, both dated February 10, 1999, from the California Board of Registered Nursing. Those letters stated that the beneficiary had passed the NCLEX-RN examination but had not yet been issued a license.

Because the evidence submitted did not demonstrate that the beneficiary had the requisite license or certification, the California Service Center, requested additional evidence on August 12, 2000. Specifically, the Service Center requested a copy of the beneficiary's CGFNS Certificate or license to practice nursing in the state of intended employment.

In response, counsel submitted a letter, dated October 30, 2000. In that letter, counsel stated that the beneficiary had already passed the Board of Nursing examination and that her license would be released as soon as possible. Counsel requested an extension of 45 days to submit a copy of the beneficiary's

license.

The director determined that the evidence submitted did not demonstrate that the beneficiary had passed the CGFNS examination and did not demonstrate that the beneficiary held a full and unrestricted license to practice nursing in California, the state of intended employment. The director denied the petition on January 27, 2001.

On appeal, counsel submits a copy of the beneficiary's certificate from the California Board of Registered Nursing and asked that the petition be approved. The certificate shows that it was issued on December 12, 2000.

The filing date was August 9, 1999. The beneficiary's license to practice registered nursing in California, the state of intended employment, was issued on December 12, 2000. The evidence submitted does not demonstrate that the beneficiary was eligible for Schedule A designation 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.