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U.S. Citizenship and Immigration Services

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prevent clearly unwarranted
invasion of personal privacy

B6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a residential care facility for the elderly. It seeks to employ the beneficiary permanently in the United States as an administrator. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the petitioner had not established that the beneficiary's qualifications for the position were acquired prior to filing the petition.

On appeal, the petitioner's counsel contends that the beneficiary was qualified for the proffered position at the time of filing the petition and 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 nature, for which qualified workers are not available in the United States.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *See Matter of Wing's Tea House,* 16 I&N Dec. 158,160 (Act. Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(d). In this case, that date is June 12, 2000.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of hotel manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	6
	High School	4
	College	4
	College Degree Required	Bachelor of Science
	Major Field of Study	Health related field aging/business

Additionally, Item 15 has a special requirement as follows: "have completed an approved certification program for administrator."

With the initial petition, the petitioner presented evidence of the beneficiary's credentials that included a copy of a "Standard Certificate" issued on August 10, 2002 to the beneficiary for completion of a "residential-elderly administrator certification program." The certificate is issued by the State of California's Department of Social

Services Community Care Licensing pursuant to provisions of their Health and Safety Code, Section 1569.23 and 1569.616.

The issue in this case is whether or not the beneficiary completed an approved certification program for administrator prior to filing the instant visa petition on June 12, 2000. Although the director requested additional evidence in this case, no issue was raised concerning the beneficiary's proof of completing an approved certification program for administrator prior to filing the instant visa petition on June 12, 2000.

The director denied the petition on March 10, 2003 because he determined that the certificate for an approved certification program for administrator was issued one year and 10 months after the priority date. Thus, the director concluded that the beneficiary did not meet the training requirements at the time that the request for certification was filed.

On appeal, counsel asserts that the state law of California requires that an administrator:

> complete at least 20 clock hours of continuing education per year in areas related to aging and/or administration.
>
> The first certificate that the beneficiary received was dated December 14, 1997. This certificate was submitted with the filing of request for labor certification and immigrant petition. The 2002 certificate was submitted to show that the beneficiary is current and maintained her requirements as administrator for a residential care facility.

Counsel submits a copy of what appears to be state law provisions regulating administrators, highlighting the provision requiring continuing education. Additionally, counsel submits a copy of a "Certificate of Completion" issued to the beneficiary for completion of "the administrator certification program for residential care facilities for the elderly," issued on December 14, 1997 by Community Education, LLC in Bonsall, California.

In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Furthermore, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Although counsel states that the certificate was submitted with the initial visa petition and DOL, the record of proceeding does not contain it. That does not, however, preclude a decision in favor of the petitioner. The director did not notify the petitioner concerning the deficiency in this piece of evidence in his request for evidence. Thus, the AAO may consider the evidence the petitioner submitted on appeal containing a copy of a certificate that pre-dates the filing of the labor certification application in this case.

According to the evidence submitted in this case, the AAO does not concur with the director's findings. The beneficiary was in the United States at the time the certificate was issued. The explanation provided on appeal concerning the ongoing nature of certification programs is credible. There is no derogatory information concerning the evidence and the petitioner's claims made through counsel on appeal. Since the beneficiary had completed an approved certification program for administrator prior to filing the instant visa petition on June 12, 2000, the beneficiary met the qualifications of the proffered position.[1] Thus, the petitioner has established the beneficiary's eligibility for the third preference immigrant visa category sought.

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. The petition is approved.

[1] The beneficiary also holds a medical degree and a four-year bachelor of science degree in chemistry and thus meets the other educational requirements of the proffered position.