



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

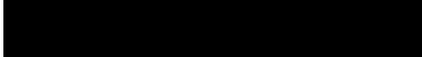
B6



FILE:   
EAC 04 014 51034

Office: VERMONT SERVICE CENTER

Date: **DEC 19 2005**

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 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 employment based immigrant visa petition was denied by the Acting Center Director (director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a nursing agency. It seeks to employ the beneficiary permanently in the United States as a registered (professional) nurse. The petitioner asserts that the beneficiary qualifies for a blanket labor 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). The director determined that the petitioner had not established that the beneficiary possessed the necessary licensing credentials required by the regulations applicable to the admission of registered nurses under Schedule A, Group I.

On appeal, the petitioner, through counsel, submits additional information and asserts that the petitioner satisfied the applicable requirements for the position offered.

Section 203(b)(3)(A)(i) of 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.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a professional nurse. Aliens who will be employed as professional nurses are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.10 with respect to which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

The regulation at 8 C.F.R. § 204.5(a)(2) provides that a properly filed Form I-140, must be “accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien’s occupation qualifies as a shortage occupation within the Department of Labor’s Labor Market Information Pilot Program.” “The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an application for Schedule A designation or with evidence that the alien’s occupation is a shortage occupation with the Department of Labor’s Labor Market Information Pilot Program shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [Citizenship and Immigration Services (CIS)].” 8 C.F.R. § 204.5(d).

The regulations set forth in Title 20 of the Code of Federal Regulations also provide specific guidance relevant to the requirements that an employer must follow in seeking certification under Group I of Schedule A. An employer must file an application for a Schedule A labor certification with CIS. It must include evidence of prearranged employment for the alien beneficiary signified by the employer’s completion of the job offer description on the application form and evidence that the employer has provided appropriate notice of filing the Application for Alien Employment Certification to the bargaining representative or to the employer’s employees as set forth in 20 C.F.R. § 656.20(g)(3). 20 C.F.R. § 656.22(a) and (b).

The regulation at 20 C.F.R. 656.22(c)(2) also 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 the 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.<sup>1</sup> Application for certification of employment as a professional nurse may be made only pursuant to this §656.22(c), and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

In this case, the immigrant visa petition was filed on October 16, 2003. The ETA 750-A accompanying the petition establishes that the position of nurse pays \$19.23 per hour and that the beneficiary will work at "various client sites in New York, New Jersey, & Connecticut." The petitioner initially failed to submit sufficient evidence that the beneficiary had either passed the CGFNS examination or that she holds a full and unrestricted (permanent) license to practice nursing in any of the states of intended employment. Instead, the petitioner attached two documents relating to the beneficiary's passage of the NCLEX-RN and her eligibility to be licensed in Florida but for the procurement of a social security number.

On December 31, 2003, the director instructed the petitioner to provide evidence that the beneficiary has passed the CGFNS examination or that she holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment or submit a certified copy of a letter from the state of intended employment which confirms that the alien has passed the NCLEX-RN examination and is eligible to be issued a license to practice nursing in that state. The director advised the petitioner that it must establish that the beneficiary is licensed, or is eligible to be licensed, in New York, New Jersey, and Connecticut.

In response, the petitioner submitted a letter and a revised ETA 750A stating the beneficiary will only be employed in New Jersey and Connecticut. The petitioner also provided copy of another letter from the Florida Department of Health referencing the beneficiary's eligibility in that state except for a social security number, a copy of the beneficiary's Florida nursing license information showing that it was issued on March 15, 2004, and copies of the New Jersey and Connecticut statutes governing the licensure of nurses.

On June 2, 2004, the director denied the petition. She determined that as of the filing date of the petition, the beneficiary was not qualified for the visa classification sought in that she lacked either documentation that she had passed the CGFNS examination, held a full and unrestricted (permanent) license to practice nursing in the state of intended employment, or submitted a certified copy of a letter from the state of intended employment that confirms that the beneficiary has passed the NCLEX-RN examination and is eligible to be issued a nursing license. The director noted that the beneficiary's licensure documents from Florida and copies of the New Jersey

---

<sup>1</sup> On October 2, 2002, the Department of Labor advised the Service, now CIS, that because many states accept passage of the National Council Licensure Examination for Registered Nurses (NCLEX-RN), a state licensing examination, it planned to pursue conforming amendments to the regulations at 20 C.F.R. 656.22(C)(2) and advised the Service that it may favorably consider an I-140 petition for a foreign nurse for Schedule A labor certification if a certified copy of a letter from the state of intended employment is submitted showing that the alien has passed the NCLEX-RN examination. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Adjudications, *Adjudication of Form I-140 Petitions for Schedule-A Nurses Temporarily Unable to Obtain Social Security Cards* (December 20, 2002).

and Connecticut statutes governing licensure in those states did not comply with the required evidence as it did not include a letter from the state licensing boards confirming eligibility to be licensed.

On appeal, counsel merely asserts that the beneficiary was "at all times" eligible as a registered nurse in Connecticut and New Jersey. Counsel submits five copies of various licensure documents consisting of 1) two copies of the beneficiary's licensing information certifying that the state of New Jersey issued her nursing license with a validity date commencing April 27, 2004, 2) a copy of a Connecticut temporary permit to practice nursing issued to the beneficiary on June 22, 2004 and expiring October 20, 2004, and 3) two copies of the beneficiary's Florida nursing license indicating that it was issued on April 16, 2004.

The AAO does not agree with counsel that at all times that the beneficiary was eligible as a registered nurse in the state(s) of intended employment. The submission of evidence of a beneficiary's state licensure in New Jersey and Florida did not occur until well after the date of filing the preference petition on October 16, 2003. Moreover, the evidence submitted on appeal related to Connecticut, indicates only that her nursing license was a temporary and not permanent as required by the regulation at 20 C.F.R. 656.22(c)(2), *supra*.

The Schedule A application must be filed with evidence that the alien has passed the pertinent CGFNS examination or holds a state nursing license. 20 C.F.R. § 656.22(c)(2). The record does not contain evidence that the Schedule A application filed on October 16, 2003, was submitted with proof that the beneficiary had passed the CFGNS examination, or held a full and unrestricted (permanent) license to practice nursing in the state(s) of intended employment, or had submitted a certified copy of a letter from the state(s) of intended employment that confirm that the beneficiary had passed the NCLEX-RN examination and was eligible to be issued a nursing license. Therefore, the petition cannot be approved. A petitioner must establish the beneficiary's eligibility for the visa classification at the time of filing; a petition cannot be approved at a future date after eligibility is established under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In view of the foregoing, the AAO cannot conclude that the director erred in finding that the petitioner has failed to establish that the beneficiary possessed the requisite credentials at the time of filing the visa petition.

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.