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U.S. Citizenship  
and Immigration  
Services



FILE: WAC 01 060 52279 Office: CALIFORNIA SERVICE CENTER Date: **FEB 18 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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*  
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 petition will be approved.

The petitioner is a nursing and rehabilitation 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 qualifications for Schedule A designation and denied the petition accordingly.

On appeal, counsel submits a brief.

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 . . . .

(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.

(ii) Professionals. - Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

Furthermore, 8 CFR § 204.5(l)(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.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The regulation at 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.

The regulation at 20 C.F.R. § 656.22 [Applications for labor certification for Schedule A occupations.] (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.

In a memo dated December 20, 2002, the Office of Adjudications of the INS, now CIS, issued a memo instructing Service Centers to accept a certified copy of a letter from the state of intended employment stating that the beneficiary has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) and is eligible to receive a license to practice nursing in that state **in lieu** of either having passed the CGFNS examination or currently having a license to practice nursing in that state.

Eligibility in this matter hinges on the petitioner demonstrating that, on the filing date of the petition, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner must also demonstrate that the beneficiary meets the statutory requirements for Schedule A qualification. Here, the petition was filed on December 26, 2000. The Form ETA 750 specifies that the position requires a bachelor's degree in nursing and two years of experience. The petitioner must also demonstrate that, as of December 26, 2000, the beneficiary possessed the qualifications imposed by the regulations.

With the petition counsel submitted (1) a copy of the beneficiary's diploma, showing that she received a bachelor's degree in nursing; (2) a copy of the beneficiary's transcripts showing four years of study; (3) the beneficiary's nursing license, issued by the government of the Philippines; (4) a copy of the beneficiary's résumé; and (5) a copy of a letter, dated October 30, 2000, from the California Board of Registered Nursing.

The letter from the California Board of Registered Nursing states that the beneficiary has completed all requirements for a nursing license in that state, but must provide her social security number so that a license may be issued. Appended to that letter is a notification that the beneficiary has passed the NCLEX-RN examination, also dated October 30, 2000.

On January 6, 2001, the California Service Center requested that the petitioner provide, *inter alia*, documentation to establish either that the beneficiary has passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination, or has a full and unrestricted license to practice professional nursing in California, the state of intended employment.

In response counsel submitted an additional copy of the October 30, 2000 letter from the California Board of Registered Nursing, described above. Counsel asserted that, because the letter states that the beneficiary has fulfilled all requirements to receive the license, the beneficiary should be treated as having the equivalent of a full and unrestricted license to practice registered nursing in California.

The director determined that the evidence submitted did not demonstrate the beneficiary's eligibility for the Schedule A designation and denied the petition on June 6, 2001.

On appeal, counsel again asserts that the evidence of the petitioner having fulfilled all of the requirements to receive a registered nursing license in California should be treated as the equivalent of having a full and unrestricted license to practice registered nursing in that state.

The December 20, 2002 memo from the Office of Adjudications of the INS, mentioned above, makes clear that the beneficiary must (1) have passed NCLEX-RN examination, (2) have passed the CGFNS examination, or (3) currently have a license to practice nursing in the state of intended employment. The record contains the October 30, 2000 notification that the petitioner passed the NCLEX-RN, which is an adequate substitute for passing the CGFNS examination.

The petitioner has overcome the sole reason for denial. 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.