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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, revoked approval of the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition's approval will be reinstated.

The petitioner is a convalescent hospital. It seeks to employ the beneficiary¹ permanently in the United States as a licensed vocational nurse (LVN). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director, determined that the petitioner had not established that the petitioner had the intent to employ the beneficiary in a specific job offer that corresponds to the position and duties stated in the labor certification.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's December 22, 2005, notice of revocation, the single issue in this case is whether or not the petitioner had established that the petitioner had the intent to employ the beneficiary in a specific job offer that corresponds to the position and duties stated in the labor certification. Based upon an investigation of the petitioner's work place and the beneficiary's employment duties there, the director noted inconsistencies between the beneficiary's current job duties and that stated in the labor certification and found it doubtful that the beneficiary would engage in the occupation of licensed vocational nurse with the petitioner upon receipt of permanent residency status.

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.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The I-140 petition was filed on January 16, 2001. Here, the Form ETA 750 was accepted on December 27, 1995.² The proffered wage as stated on the Form ETA 750 is \$11.00 per hour (\$22,880.00 per year). The Form ETA 750 states that the position requires two years of experience in the proffered position or two years of experience as a staff nurse.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal³.

¹ The beneficiary has since married. She is now known as [REDACTED]

² It has been approximately 12 years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

³ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which

Evidence submitted in the record includes the following: a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor with collateral correspondence; the beneficiary's license as a Licensed Vocational Nurse issued by the Board of Vocational Nursing & Psychiatric Technicians with an expiration date November 30, 2002; an explanatory letter from counsel dated August 29, 2002, stating that the beneficiary was in the process of obtaining Visa Screen Certificate and completing the requirements for the beneficiary's vocational nurse license; six letters from the petitioner, dated September 7, 2000, May 5, 2001, August 26, 2002, January 20, 2005, February 1, 2005 and another undated letter; an employment verification letter dated April 30, 1993, from [REDACTED] Directress, Santo Tomas University Hospital, Manila, the Republic of the Philippines; the beneficiary's U.S. federal income tax Form 1040 partial returns for 1998, 1999, 2000 and 2001; the beneficiary's U.S. federal income tax Form 8453 "e-file" declaration for 2003; partial returns for 1998, 1999, 2000 and 2001; Wage and Tax Statements (W-2) issued by the petitioner to the beneficiary for 2000 in the amount of \$32,129.66, and \$15,133.15;⁴ the approval notice for the I-140 petition dated February 20, 2001; the beneficiary's CIS Form I-94 arrival/departure records; biographic pages from the beneficiary's renewed passport; the beneficiary's personal information including her birth and marriage certificates; an employment verification dated January 16, 1989, from [REDACTED], Directress, Immaculate Conception Academy of Manila, the Republic of the Philippines; a statement submitted by [REDACTED] RN, Assistant Directress, Nursing Service Department, Santo Tomas University Hospital, Manila, the Republic of the Philippines; the petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the four quarters of 2004 that were accepted by the State of California stating that the beneficiary received \$11,185.70, \$13,764.59, \$9,927.27, and \$11,758.92 (total of the wage amounts paid for 2004 are \$46,636.48); the petitioner's U.S. federal income tax Form 1120S returns for 2001, 2002 and 2003; a license from the State of California, Department of Health Services for [REDACTED] [Center] to operate a skilled nursing facility; the beneficiary's secondary education diploma; the beneficiary's university education diploma from the University of San Tomas, Manila, the Republic of the Philippines evidencing attainment of a Bachelor of Science in nursing; a certificate dated December 31, 2003 from The International Commission on Healthcare Professions, a division of CGFNS evidencing that the beneficiary "has met all of the requirements of section 212(a)(5)(C) of ... [the Act], as specified in Title 8, Code of Federal Regulations section 212.15(f) for the Profession of Licensed Practical Or Vocational Nurse. Issued: December 31, 2003;" the beneficiary's license as a Licensed Vocational Nurse issued by the Board of Vocational Nursing & Psychiatric Technicians with an expiration date November 30, 2006; Wage and Tax Statements (W-2) issued by the petitioner to the beneficiary for 2001, 2002, 2003 and 2004 in the amounts of \$27,645.19, \$44,031.22, \$41,282.20 and \$45,142.91; five payroll statements issued by the petitioner to the beneficiary in 2004 and 2005 evidencing year-to-date wages paid of \$33,441.37 and \$2,571.63 (\$19.50 hourly rate both years) respectively; the beneficiary daughter's birth certificate; an affidavit of [REDACTED] administrator of [REDACTED] attested December 9, 2005; an affidavit of the beneficiary attested December 12, 2005; and, counsel's reply to the notice of intent to revoke dated December 14, 2005.

Counsel has submitted a brief in the matter. On appeal counsel contends that the I-140 petition process for a preference immigrant visa is a prospective process for future employment as a licensed vocational nurse that is effective when permanent residence is authorized by CIS. This is correct.

are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

⁴ By The Living Center of Canoga Park, Canoga Park, California. Since the federal employer identification number corresponds to the petitioner's FEIN, this facility is also operated by the petitioner.

Counsel asserts that the beneficiary's employment history must be reviewed objectively to determine whether or not the beneficiary's qualifications and experiences are sufficient when the Alien Employment Application (USDOL ETA 750-A/B) was accepted by the U.S. Department of Labor.⁵ While counsel is correct, his contention is a generalization that must be qualified in light of the facts of the case. The beneficiary's employment during the pendency of the petition proceedings is relevant according to case precedent. *See Matter of Semerjian*, 11 I&N 751 (Reg. Com. 1966). The petitioner's employment of the beneficiary as Director of Staff Development and as a licensed vocational nurse is relevant.

On appeal counsel submitted the following documents: the director's notice of revocation dated December 22, 2005; the director's notice of intent to revoke dated November 16, 2005; and a statement dated April 30, 1993, submitted by [REDACTED] RN, Assistant Directress, Nursing Service Department, Santo Tomas University Hospital, Manila, the Republic of the Philippines; and, a CIS Interoffice Memorandum (HQOPRD 70/6.2.8 -P) dated August 4, 2003.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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).

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, she represented that she was employed by the petitioner as a licensed vocational nurse since December 1995 providing duties to the petitioner as stated in the Section 13 of the Form ETA 750 Part A.

Prior to the above recited employment, the beneficiary stated that from May 1995 to December 1995 she was not employed.

From March 1994 to May 1995, the beneficiary stated that she was employed as a certified nursing assistant by Huntington Beach Convalescent Hospital, Huntington Beach, California, assisting residents with bathing, eating, dressing and walking as well as assessing and monitoring changes of resident's vital signs.

From March 1993 through January 1994, the beneficiary was employed as a registered nurse/charge nurse at Tan Tock Seng Hospital, Singapore. While there, she stated that she assisted doctors in patient care, ward rounds and treatments, received and handed over nursing reports to the incoming nursing staff at shift change and she utilized ECG machines, defibrillator and suction machines.

From January 1989 to March 1993, the beneficiary stated she was employed by Santo Tomas University Hospital, Manila, the Republic of the Philippines, as a registered nurse/charge nurse. While there, she checked on staff attendance per shift, served as a liaison officer between hospital working committees, and followed

⁵ Counsel cites two cases, *In Matter of Delitizer of Newton*, 88 INA 482 (BALCA 1990), and, *Modular Container Systems, Inc.*, 89 INA 228 BALCA 1991).

operational, nursing policies and protocols. She utilized ECG machines, respirator life support, nebulizer and suction machines.

From June 1988 to January 1989, the beneficiary stated that she was employed by the Immaculate Conception Academy of Manila, the Republic of the Philippines as a school nurse. Her stated duties were to assist doctors and dentists with annual physical exams of students and she complied with medical protocols for incidents or hazard within the school.

To verify and substantiate the above declaration of prior work experience counsel submitted the following documents: a statement dated April 30, 1993, submitted by [REDACTED] RN, Assistant Directress, Nursing Service Department, Santo Tomas University Hospital, Manila, the Republic of the Philippines; an employment verification letter dated April 30, 1993, from [REDACTED], Directress, Santo Tomas University Hospital, Manila, the Republic of the Philippines; an employment verification dated January 16, 1989, from [REDACTED] Directress, Immaculate Conception Academy of Manila, Manila, the Republic of the Philippines; a statement submitted by [REDACTED], RN, Assistant Directress, Nursing Service Department, Santo Tomas University Hospital, Manila, the Republic of the Philippines; and an employment verification dated January 16, 1989, from [REDACTED] Directress, Immaculate Conception Academy of Manila, Manila, the Republic of the Philippines.

On March 8, 2005, the director requested that the documents submitted by the petitioner to demonstrate her education and employment experience be verified. On January 12, 2006, the beneficiary's documents were authenticated as true by the CIS overseas investigation.⁶

The regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(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.

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa

⁶ A certificate of employment was received by CIS from Santo Tomas University Hospital and the investigation determined that the beneficiary's dates of employment at Santo Tomas University Hospital were from February 1, 1989 to March 20, 1993. The CIS investigation also received a certification from the Immaculate Conception Academy of Manila, the Republic of the Philippines verifying the beneficiary's employment there as a school nurse. The beneficiary's secondary school diploma and graduation was also verified.

petition is no longer eligible for the classification sought, the director may seek to revoke the approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." A Notice of Intent to Revoke is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).

In the instant case, 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 licensed vocational nurse. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 - Grade School c [completed]
 - High School c
 - College blank
 - College Degree Required blank
 - Major Field of Study blank

The applicant must also have two years of experience in the job offered or two years of experience in the related occupation of staff nurse, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A relating to other special requirements states "Must have valid California Vocational Nursing License. Must have experience in supervision of workers."

During the petition process, the petitioner has provided six employment verification letters from the petitioner dated September 7, 2000, May 5, 2001, August 26, 2002, January 20, 2005, February 1, 2005, and one undated letter.

By her letter dated September 7, 2000, _____ administrator, provided a description of the _____ Lake Terrace, California. She stated that it is a 126 bed long term skilled nursing facility that was established in 1986 employing 103 individuals with a gross income of \$3,535,034.00.

By her letter dated _____, _____ administrator of the _____ Lake Terrace, California, facility confirmed the continuing offer of employment to the beneficiary as a licensed vocational nurse, at an hourly rate of \$16.00 per hour to perform duties as stated in the labor certification.

By his undated letter, and then by his letter dated August 26, 2002, _____ administrator of the _____ Lake Terrace, California, facility confirmed the continuing offer of employment to the beneficiary as a licensed vocational nurse, at an hourly rate of \$18.00 per hour to perform duties as stated in the labor certification.

By her letters dated January 20, 2005 and February 1, 2005, _____ administrator of the _____, Lake Terrace, California, facility confirmed the continuing offer of employment to the beneficiary as a licensed vocational nurse, at an hourly rate of \$19.50 per hour to perform duties as stated in the labor certification.

Counsel has provided proof of the beneficiary's prior employment experience as a certified nursing assistant (March 1994 to May 1995), registered nurse/charge nurse (March 1993 through January 1994), registered nurse/charge nurse (January 1989 to March 1993), school nurse (June 1988 to January 1989), as well as evidence

of a continuing employment offer. We find that the prior employment positions as verified in pertinent part by CIS, and the duties enunciated by the beneficiary, are those duties stated in the labor certification for the position of a licensed vocational nurse. Further, we find that the beneficiary has two years of experience in the proffered position or two years of experience as a staff nurse.

Counsel also submitted documentary evidence that the beneficiary possesses a secondary education diploma; a university education diploma from the University of San Tomas, Manila, the Republic of the Philippines evidencing attainment of a Bachelor of Science Degree in nursing; a certificate dated December 31, 2003 from The International Commission on Healthcare Professions, a division of CGFNS evidencing that the beneficiary "has met all of the requirements of section 212(a)(5)(C) of ... [the Act], as specified in Title 8, Code of Federal Regulations section 212.15(f) for the Profession of Licensed Practical Or Vocational Nurse" as issued on December 31, 2003; and a license as a Licensed Vocational Nurse issued by the Board of Vocational Nursing & Psychiatric Technicians, State of California.

We find that according to Item 15 of Form ETA 750A relating to other special requirements that states "Must have valid California Vocational Nursing License. Must have experience in supervision of workers" that the beneficiary has the required professional license. Further, based upon the beneficiary's statement of prior work experience as verified by letters from employers giving the name, address, and title of the employer, and a description of the experience of the alien all according to the regulation at 8 C.F.R. § 204.5(1)(3), that the beneficiary has experience in supervision of workers.

On October 17, 2005, CIS conducted an investigation and interviewed personnel at the petitioner's facility which is the beneficiary's work place. Thereafter, the director issued an intent to revoke the petition's approval on November 16, 2005. According to the notice, the director stated that the beneficiary was not employed under the conditions set forth on the labor certification supporting the instant petition.

The results of the investigation are stated in counsel's reply to the notice of intent to revoke.

... [CIS reported that] the beneficiary does not appear to be working in the particular job stated on the petition since an investigation revealed that the beneficiary is the director of staff development. Little or no direct patient care responsibilities are required since she reports to the administrator while the LVN's report to the Director of Nurses.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*,⁷ . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause"⁸ where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be

⁷ *Matter of Estime*, 19 I&N 450 (BIA 1987).

⁸ Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

In determining the respective jurisdictions of the Department of Labor and the CIS, one may turn to the entire body of recent court proceedings interpreting the interplay of the agencies and strictly confining the final determination made by the Department of Labor. See *Stewart Infra-Red Commissary, Etc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981); *Denver Tofu Company v. District Director, Etc.*, 525 F. Supp. 254 (D. Colo. 1981); and, *Joseph v. Landon*, 679 F.2d 113 (7th Cir. 1982).

These cases recognize the labor certification process and the authority of the Department of Labor in this process stem from section 214(a)(5)(A) of the Act, 8 U.S.C. 1182(a) (5)(A). In labor certification proceedings, the Secretary of Labor's determination is limited to analysis of the relevant job market conditions and the effect, which the grant of a visa would have on the employment situation. CIS, through the statutorily imposed requirement found in section 204 of the Act, 8 U.S.C. 1154, must investigate the facts in each case and, after consultation with the Department of Labor, determine if the material facts in the petition including the certification are true and correct. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

Although the advisory opinions of other Government agencies are given considerable weight, CIS has authority to make the final decision about a beneficiary's eligibility for occupational preference classification. The Department of Labor is responsible for decisions about the availability of United States workers and the effect of a prospective employee's employment on wages and working conditions. The Department of Labor's decisions concerning these factors, however, do not limit the CIS's authority regarding eligibility for occupational preference classification.⁹ Therefore, the issuance of a labor certification does not necessarily mean a visa petition will be approved.

⁹ Relying in part on *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983), the Ninth Circuit Court of Appeals in *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983) stated in pertinent part:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

Id. at 1008. The court in that case relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

On December 22, 2005, the director revoked the approval of the I-140 petition. The director found that the beneficiary was not employed in the position, licensed vocational nurse, according to the terms as required by the supporting labor certification.

There is no regulatory requirement that a beneficiary of an employment based preference visa petition be in the proffered job of licensed vocational nurse until permanent residence is authorized. However, the director's concern was whether the beneficiary had the intent to work in the offered job of licensed vocational nurse since she had been employed as a director of staff development.

In pertinent part, in the case *Matter of Semerjian*, 11 I&N 751 (Reg. Com. 1966), the court stated that in resolving the question of intent to accept employment in the stated job of the labor certification consideration may be given to factors such as whether the alien is presently employed, (and in that case, his/her profession) and, if not, the length of time he/she has not been so employed and the reasons therefore. By affidavit of [REDACTED] administrator, attested December 9, 2005, she has stated that as of December 6, 2005, the beneficiary "has solely performed the duties of an LVN" without any additional duties.

There is evidence in the record of proceeding that the beneficiary was employed as a nurse or staff nurse for prior employers before her arrival in the United States for two years. The record does show that the beneficiary was employed variously as a certified nursing assistant, a registered nurse/charge nurse, a registered nurse/charge nurse and a school nurse performing duties that were similar to those stated in the labor certification. We also find that the beneficiary intends to accept the position of licensed vocational nurse according to the terms of the labor certification according to the regulation at 8 C.F.R. § 204.5(c) since according to [REDACTED] that is what the beneficiary is now doing.

We find that evidence submitted by the petitioner as found in the record demonstrates that the petitioner intends to employ the beneficiary in the offered position.

Although the director, based upon the evidence then submitted, revoked approval of the preference visa petition, evidence submitted upon appeal has overcome the director's findings and decision.

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

See *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition's approval is reinstated.