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FILE: LIN 04 225 50501 Office: NEBRASKA SERVICE CENTER

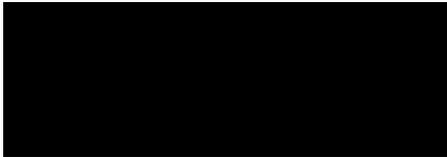
Date: JAN 23 2008

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a nonprofit hospital that seeks to employ the beneficiary as a nuclear medicine technologist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, an appeal brief, and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. Section 212(a)(5)(C) of the Act concerns immigrant and nonimmigrant aliens seeking to enter the United States for the purpose of performing services in health-care occupations (other than physicians). The alien is inadmissible unless he or she presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of the Department of Health and Human Services (HHS), relating to the alien's education, training and experience, license, and English language proficiency. The requirement of 212(a)(5)(C) covers the following seven health-care occupations as listed at 8 C.F.R. § 212.15(c): licensed practical nurses, licensed vocational nurses, and registered nurses; physical therapists, occupational therapists; speech language pathologists and audiologists; medical technologists (also known as clinical laboratory scientists); medical technicians (also known as clinical laboratory technicians); and physicians' assistants.

The director denied the petition, concluding that the beneficiary is not qualified for the proffered position because the beneficiary does not possess certification from the CGFNS or an approved equivalent credentialing organization. The director stated that the record reflects that the beneficiary holds a bachelor's degree in biological sciences and a diploma of technology in nuclear medicine, and that a submitted educational evaluation reveals that the beneficiary possesses the equivalent to a bachelor's degree in biological sciences with an undergraduate minor in nuclear medical technology from an accredited college or university in the United States.

On appeal, counsel states that a September 17, 2004 letter by the chief executive officer of CGFNS/International Commission on Healthcare Professions (ICHP) establishes that the proposed position of nuclear medicine technologist does not require certification. Counsel also states that a nuclear medicine technologist is not shown in the regulations or CIS website as requiring certification; and that the CIS website does not indicate that the Department of Homeland Security (DHS) has authorized a credentialing organization to provide certification for a nuclear medicine technologist.

Upon review of the record, the petitioner has established that the beneficiary is qualified to provide services as a nuclear medicine technologist in the state of Washington.

The record contains two letters from CGFNS/ICHP. A March 19, 2004 letter from the CGFNS/ICHP states that it does not have any standards to assess the occupation of a nuclear medicine technologist; and a September 17, 2004 letter from CGFNS/ICHP comments on DHS' administration of the July 25, 2003 Final Rule (Final Rule). In this letter, CGFNS/ICHP states that based on information from the Department of Labor (DOL) CGFNS/ICHP believes that the occupation of nuclear medicine technologist is not covered by the Final Rule and therefore does not require certification as a healthcare worker pursuant to section 212(a)(5)(c) of the Act.

The regulation at 8 C.F.R. § 212.15(e) lists three organizations that are authorized to issue health care worker certifications: The Commission on Graduates of Foreign Nursing Schools (CGFNS), which is authorized to issue certificates to all 7 health care occupations (the healthcare occupations are shown on page two of this decision); the National Board for Certification in Occupational Therapy, which is authorized to issue certificates for occupational therapists; and the Foreign Credentialing Commission on Physical Therapy, which is authorized to issue certificates for physical therapists. The CIS website<sup>1</sup> lists the organizations that are authorized to issue health care worker certifications; they are the Commission on Graduates of Foreign Nursing Schools (CGFNS), which is authorized to issue certificates to all 7 health care occupations; the National Board for Certification in Occupational Therapy, which is authorized to issue certificates for occupational therapists; and the Foreign Credentialing Commission on Physical Therapy, which is authorized to issue certificates for physical therapists. The CIS website also lists the same 7 health care occupations as shown in the regulations.

Considered collectively, the submitted evidence of the two letters from CGFNS/ICHP, the information from the CIS website, and the regulation at 8 C.F.R. § 212.15(a), reflect that the occupation of nuclear medicine technologist does not require certification under section 212(a)(5)(c) of the Act.

The AAO observes that the record reflects that the beneficiary possesses certification by the Nuclear Medicine Technology Certification Board to practice in nuclear medicine technology; registration with the state of Washington as a certified radiologic technologist, nuclear medicine, active; and registration with the American Registry of Radiologic Technologists. The Foundation for International Services, Inc. (FIS) considers the beneficiary's diploma from Simon Fraser University in Vancouver, British Columbia, Canada, to be the equivalent to a bachelor's degree in biological science from an accredited college or university in the United States; and the diploma from the British Columbia Institute of Technology in Burnaby, British Columbia, Canada, the equivalent to one year of university-level credit in nuclear medicine. Copies of the transcripts and diplomas are contained in the record of proceeding.

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<sup>1</sup> The website address is [http://uscis.gov/graphics/howdoi/Health\\_Cert.htm](http://uscis.gov/graphics/howdoi/Health_Cert.htm).

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As related in the discussion above, the petitioner has established that the beneficiary is qualified to perform the duties of the proposed position.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.