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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



FILE: EAC 01 193 54598 Office: VERMONT SERVICE CENTER

Date: DEC 16 2003

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:



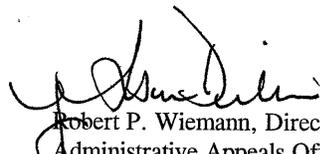
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an acute care hospital. It employs 3,000 people and has a gross annual income of more than \$341,000,000. It seeks to temporarily employ the beneficiary as an operating room nurse for a period of three years. The director determined that the petitioner had not established that the position is a specialty occupation.

On appeal, counsel asserts that the position of operating room registered nurse is a specialty occupation, which requires a baccalaureate degree.

In response to the director's request for evidence, the petitioner asserts that foreign nurse candidates are required to enter positions at the hospital through an internship program for which a bachelor's degree in nursing is a prerequisite. The internship lasts "up to 6 months." There was no reference to the internship component in the documents submitted with the initial petition. The evidence submitted with the petition indicates that the beneficiary would immediately enter into the proffered position as an operating room nurse. The documents submitted in response to the director's request for evidence, however, make it clear that the beneficiary would have to spend a significant period in a training program before entering into the proffered position.

The petitioner appears to be petitioning for two separate positions, the first as an intern or trainee, and the second as an operating room registered nurse. A beneficiary must enter into the approved position upon arrival in the United States, not following a period of training. It is not possible to apply for more than one position (i.e., intern and perioperative nurse) in the same petition.

The AAO will not discuss the merits of this matter, as the above-referenced issues mandate that the appeal cannot be sustained, nor the petition approved.

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 sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.