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U.S. Citizenship
and Immigration
Services

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FILE: LIN-04-076-70001 Office: NEBRASKA SERVICE CENTER

Date: SEP 14 2005

IN RE: Applicant:
Beneficiary:



APPLICATION: Application for Authorization to Issue Certification for Health Care Workers pursuant to section 212(a)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(C)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant processes visa-screening certificates for foreign health care workers. It seeks to obtain authorization to issue visa-screening certificates to foreign health care workers. The director determined, in conjunction with the recommendation of the Secretary of Health and Human Services (HHS), that the applicant had not provided a response or had failed to provide sufficient information and evidence illustrating that it met the regulatory standards delineated at 8 C.F.R. §§ 212.15(k)(1)(ii)(B) and (v); (k)(1)(iii)(A) and (B); (k)(2)(i); (k)(3)(iii); (k)(4)(iii) and (vii); and (k)(8)(iv). The director also determined, in conjunction with HHS' recommendation, that the applicant failed to illustrate that it met the regulatory standards delineated at 8 C.F.R. §§ 212.15(k)(1)(ii)(C), (2)(iii), (4)(iv) and (v), (5)(i) and (ii), and (6) because of its failure to substantiate its asserted relationship to CGFNS.

On appeal, the applicant submits a brief and additional evidence.

Section 212(a)(5)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(5)(C), provides for the granting of authorization to an independent credentialing organization, deemed equivalent to the Commission on Graduates of Foreign Nursing Schools (CGFNS) by Citizenship and Immigration Services (CIS) in consultation with HHS, to issue a certificate to foreign health-care workers to overcome the inadmissibility provision at section 212(r) of the Act, 1182(r)¹.

The regulation at 8 C.F.R. § 212.15(k) states, in pertinent part, the following²:

Standards for credentialing organizations. [CIS] will evaluate organizations, including CGFNS, seeking to obtain approval from [CIS] to issue certificates for health care workers, or certified statements for nurses. Any organization meeting the standards set forth in paragraph (k)(1) of this section can be eligible for authorization to issue certificates. . . . All organizations will be reviewed, including CGFNS, to guarantee that they continue to meet the standards required of all certifying organizations, under the following:

(1) *Structure of the organization.*

* * *

(ii)(A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/placement organization.

(B) [CIS] shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

* * *

¹ This ground of inadmissibility was established by section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-208, 110 Stat. 3009, 636-37 (1996).

² Selected provisions are limited to those raised by HHS and the director as the issues in this case.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

- (A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and
- (B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

* * *

(v) The organization must select representatives of the discipline using one of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

- (A) Be selected directly by members of the discipline eligible to practice in the United States;
- (B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or
- (C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

* * *

(2) *Resources of the organization.*

- (i) The organization shall demonstrate that its staff possess[es] the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

* * *

(3) *Candidate evaluation and testing mechanisms*

* * *

- (iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

* * *

(4) *Responsibilities to applicants applying for an initial certificate or renewal.*

* * *

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

* * *

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

* * *

8) *Criteria for maintaining accreditation.*

* * *

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to [CIS] as part of the 5-year reauthorization application, and at any other time upon request by HHS or [CIS].

On the application and supporting documents, the applicant claimed to have been established on October 26, 2003 and that it offers visa screen certificates to licensed practical nurses, licensed vocational nurses, and registered nurses; occupational therapists; physical therapists; speech language pathologists and audiologists; medical technologists (clinical laboratory scientists); physician assistants; and medical technicians (clinical laboratory technicians). The applicant stated the following to describe itself, in pertinent part:

The [applicant] will be responsible for all review and organization of documentation, collection of all reports such as education evaluation and review, licensure review and validation, English language proficiency and completion of the nursing knowledge exam as required.

Expertise of the organizations, CGFNS and CES³, which presently provide [sic] the testing and are approved to do so, will be utilized.

³ CES is the Credential Evaluation Service, a division of CGFNS under the International Commission on Health

The elimination of review of all documentation and gathering at the testing organizations will be removed so that they may process more testing and evaluation at their sites nationally and internationally therefore enabling the processing of more visa screen completions by the use of collaboration [than] can be accomplished in the present system.

The applicant also stated that it would be hiring examiners and counselors in the health care field to review and evaluate documentation submitted by foreign health care workers seeking certificates for immigrant and non-immigrant visa purposes. It also stated that it would have an open file program with CIS on the Internet and would follow up with the foreign health care workers for as long as CIS required.

With respect to its process in issuing certificates, the applicant stated the following, in pertinent part: "The [applicant] will manage the paperwork flow and approval from each applicant by *utilizing* the testing stations in place by CGFNS, for English competency and medical competency, and by credential review and education review provided by CES and other authorized organizations as required and approved through [CIS]." (Emphasis added). The applicant also stated that counselors would work with foreign health care workers to obtain, coordinate, and retrieve all necessary information and documentation, including "speaking to institutions, licensure organizations and educational facilities to expedite the gathering of information." Examiners would process all information as to qualifications, monitoring accuracy and authenticity, and a Quality Assurance department would be in place throughout the process to review all applications from foreign health care workers, and upon its approval, the process would end with the applicant's director issuing a final approval of a visa-screening certificate. The applicant stated that it would have counselor and directors

trained in the required medical areas with either the same or [sic] designation or at a superior level so review of the submitted material may be ascertained at the office location. The [applicant] has access to several of the State of Florida Universities and College professor who at request will review and evaluate education equivalents in the occupations requested for review should a question arise.

With respect to its expertise, knowledge, and experience in the health care occupations for which it seeks authorization, the applicant stated that it has two chairmen who have "been involved with recruiting professionals, physicians and health care professionals for the health care industry for a combined 15 (fifteen) years. They have associated with professionals from various countries seeking employment in the United States and are aware of the visa screen and the process involved." The applicant also states that its director, counselors, and examiners would have medical designations and training that would "qualify them to evaluate the information received." The applicant stated that it would also consider those "who have been trained as employees [sic] trainers, teachers or professors, and hold advanced degrees or designations in the medical field." The applicant stated that the Quality Assurance staff would have the necessary credentials to review information for accuracy. The applicant stated that a training program has been developed for counselors, directors, and examiners for reviewing foreign credentials, and if "additional expertise is required we have access to the local University and Medical teaching facilities for counsel from the teaching and medical qualification departments."

With respect to how the applicant complies with the standards delineated at 8 C.F.R. § 212.15(k), the applicant stated that it would be independent and unaffiliated with any outside testing or monitoring organizations. It said that it is for-profit and would hire a full-time staff "that hold the same designation in health care (or a higher level), as the applicants do, and are eligible to practice, by certification and or license in the United States," that

care Professions (ICHP) that evaluates educational credentials.

would be barred from conflicting outside employment monitored by background checks and confidentiality agreements. The applicant said it would provide information to foreign health care worker applicants about its procedures for evaluations, and that its “examinations will take place under the auspices of CGFNS at their testing sites” with results sent to the health care worker applicant. The applicant said it would “*depend* upon the testing and evaluation from CGFNS and CES” for their expertise in the evaluation of foreign educational credential equivalencies, and that “[t]he present system utilized by CGFNS *will be adopted and used* as necessary for this purpose.” (Emphasis added). In addition to utilizing the “testing and predictor test sites” available through CGFNS, the applicant said it would also “*utilize* the credential and educational review offered by CES.” (Emphasis added).

In its final mission statement, the applicant stated that it would “augment the ability of present organizations to facilitate the speedy and complete admission of qualified health care professionals” and “not develop secondary medical testing and language certification, as there is presently an existing organization providing those services in a professional manner that is accepted by [CIS], (CGFNS).”

The director sought consultation with HHS as directed under 8 C.F.R. § 212.15(j)(3), which found that the applicant failed to submit evidence or responsive information to many of the standard criteria and implied an uncorroborated relationship with CGFNS that CGFNS disavowed and thus adversely impacted the applicant’s assertion that it met the eligibility standards concerning its structure as an independent entity capable of developing standards for granting certificates, and examination content, development and administration; resources such that it could conduct its own examinations; responsibilities to applicants about examination sites and reporting results; and maintenance of comprehensive and current information necessary to evaluate foreign educational institutions and accrediting bodies, and licensing and credentialing systems. Thus, HHS determined that the applicant failed to illustrate that it met the regulatory standards delineated at 8 C.F.R. §§ 212.15(k)(1)(ii)(C), (2)(iii), (4)(iv) and (v), (5)(i) and (ii), and (6) because of its failure to substantiate its asserted relationship to CGFNS. HHS also determined that the applicant failed to provide sufficient evidence and information concerning the eligibility standards delineated at 8 C.F.R. §§ 212.15(k)(1)(ii)(B) and (v); (k)(1)(iii)(A) and (B); (k)(2)(i); (k)(3)(iii); (k)(4)(iii) and (vii); and (k)(8)(iv).

The director determined that the evidence submitted did not establish that the applicant was eligible to be authorized to issue certifications for health care workers, and, on January 31, 2005, denied the application⁴. The director incorporated HHS’ recommendations into his decision.

As part of the record of proceeding, a statement from CGFNS, dated June 21, 2004, stating that it became aware on that date that the applicant was claiming a relationship with CGFNS, the false ability to issue visa screen certificates to health care workers, violations of copyrights materials from CGFNS, and stated that “CGFNS wants all health care professionals and all health care organizations to understand that it has no relationship whatever with [the applicant]; that is has not authorized [the applicant] to use CGFNS’ forms or its website.”

On appeal, the applicant asserts that “CGFNS is a non-profit organization, [the applicant] is a for profit [c]orporation, we never stated we were part of, or intended to be part of, or associated with CGFNS in any documentation. [The applicant] has no knowledge of CGFNS policy, process or procedures [sic].” The applicant also states that it never referenced a working relationship with CGFNS and it would be up to foreign health care workers to utilize the predictor test of CES or CGFNS, or any other authorized agency, but “[a]s CGFNS/ICHP is presently the only authorized agency, for the predictor test, obviously applicants would chose [sic] them if that service is a requirement.” The applicant states that CGFNS and CES tell applicants they may direct a report of

⁴ Another decision, with the exact same content, was issued on November 19, 2004.

their test to any party, and thus the applicant would direct applicants to approved testing entities and have their results sent to the applicant. The applicant states that its foreign health care worker applicants would utilize CGFNS predictor tests and the applicant would accept the results given by CGFNS.

The applicant also asserts on appeal that it will not conduct any testing or pre-qualifying examinations, which would be administered by the National Council of State Board of Nursing's National Council Licensure Examination (NCLEX) or their duly authorized agents, as well as those applicants who qualify and apply to ICHP and CGFNS for that service, and that it would have a voting member to "represent the interest of the consumer and public at large who is not a member of the discipline," and thus it complies with 8 C.F.R. §§ 212.15(k)(1)(iii)(A) and (B). It claims that its Quality Assurance section would be responsible for the review of accuracy for eligibility criteria of each foreign health care worker applicant, and relies upon the NCLEX's worldwide availability to eliminate the validity, cost or necessity of a pre-test evaluation, and thus it complies with 8 C.F.R. § 212.15(k)(4)(iii). The applicant states that since it would not be administering pre-tests, and directing foreign health care workers to take NCLEX or CGFNS/ICHP tests, it meets the criteria at 8 C.F.R. § 212.15(k)(4)(vii). Finally, the applicant states that since most applicants would take NCLEX at overseas locations, pre-testing would become obsolete, and that it has made arrangements with Assessment Technologies Institute (ATI) to utilize their pre-testing facilities once ATI is approved to offer pre-testing services by CIS. Additionally, the applicant states that it would make sure that all its health care worker applicants had passed NCLEX or a pre-test prior to issuing a certificate. Thus, the applicant states it meets the criteria at 8 C.F.R. § 212.15(k)(8)(iv). The applicant also reiterates many points previously made in its initial submission. On appeal, the applicant submits excerpts from CES and CGFNS showing that its foreign health care worker applicants may send test results to third parties of their choice.

At the outset, the AAO notes that the regulation at 8 C.F.R. § 212.15(j) creates a mandatory requirement that CIS accord great discretion to HHS' recommendations upon issuance of its decision. Among preambulatory comments to issuance of the final regulation, in its section titled "*The Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates*," CIS stated the following, in pertinent part:

An organization seeking approval to issue certificates or certified statements *should submit evidence* addressing each of the standards. These standards were developed by HHS in order to ensure that an organization meets the requirements contemplated by Congress. In drafting these standards, HHS drew upon the legislative history to IIRIRA, and drew extensively from the standards of the National Commission for Certifying Agencies, a nationally recognized body that accredits certifying organizations. There are four guiding principles to the standards:

1. [CIS] should not approve a credentialing organization, unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa;
2. The organization should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession, and the results of examinations for proficiency in the English language appropriate for the health care field in which the alien will be engaged;
3. The organization should also maintain comprehensive and current information on foreign educational institutions, ministries of health, and foreign health care licensing jurisdictions; and

4. If the health care field is one for which a majority of the States require a predictor examination (currently, this is done only for nursing), the organization should demonstrate an ability to conduct the examination outside the United States.

(Emphasis added).

CIS also stated that its reliance and collaboration with HHS was out of concern that organizations issuing certificates should be held to a select group of standards to avoid unqualified organizations from issuing certificates to foreign health care workers which would result in adverse consequences for health care in the United States. CIS conceded that the standards are voluminous and strict, and stated that “[a]n organization seeking approval is required to meet the majority, but not all, of the listed standards,” but also stated that “[a]n organization seeking approval to issue a health care certificate should make every attempt to submit evidence addressing each of the criteria listed.”

I. The applicant failed to submit evidence showing that it meets the eligibility standards set forth at 8 C.F.R. §§ 212.15(k)(1)(ii)(B) and (v).

The AAO concurs with the director’s decision and HHS’ recommendation that there is insufficient information or evidence that the applicant is able to render impartial advice regarding a foreign health care worker’s qualifications regarding training, experience, and licensure or that it selected representatives of the disciplines using a recommended method or demonstrating that its selection process meets the intent of the recommended methods.

The applicant did not provide sufficient detail or evidence concerning its processes for hiring its examiners, counselors, directors, and quality assurance staff members. It restated the regulation by stating that these employees would be impartial because they would not be permitted to work with another employer presenting a conflict of interest⁵. It also stated that it had two chairmen involved with recruitment of foreign health care professionals, without any identifying information about those chairmen, their past employment, or their affiliations⁶. Without identifying its staff or those it sought to hire, the applicant claimed that its director, counselors, and examiners would have medical designations and training or be those “who have been trained as employees [sic] trainers, teachers or professors, and hold advanced degrees or designations in the medical field,” and if necessary would rely upon the expertise of local medical universities. The petitioner provided no evidence or specific details concerning its internal processes for hiring, retention, and screening of its staff or maintaining impartiality other than its vague recitation of the regulatory language. It provided no evidence that it has a relationship or agreement with any medical university or facility, despite its assertion to have a relationship with a university in Florida. Likewise, it provided no evidence that it has the intent to or would select representatives who were (1) selected directly by members of the discipline eligible to practice in the United States; (2) selected by members of a membership organization or by duly elected representatives of a membership organization; or (3) selected by a membership organization representing the discipline from a list of acceptable candidates supplied by

⁵ However, no evidence was submitted concerning its procedure for performing background checks or communication with a third-party entity it might rely upon to perform those for it, or a copy of any proposed confidentiality agreements it would employ.

⁶ It is unknown to CIS, for example, if those chairmen have a vested and profit-seeking interest in procuring nonimmigrant or immigrant visas for health care workers.

a credentialing body⁷. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

II. The applicant failed to submit evidence showing that it meets the eligibility standards set forth at 8 C.F.R. §§ 212.15(k)(1)(iii)(A) and (B).

The AAO concurs with the director's decision and HHS' recommendation that there is insufficient evidence that the applicant would employ individuals in the same discipline to oversee its certification process or that it would employ at least one voting member whose interests represent consumers and the public at large and would not derive any income from the discipline, related organizations, or the applicant itself.

HHS indicated that it could not determine the roles and responsibilities of the Board that the applicant proposed to create to oversee its certification and examinations processes. The AAO notes that the applicant did not provide any information about a voting member whose interests represent consumers and the public at large and would not derive any income from the discipline, related organizations, or the applicant itself until its appeal, and aside from its assertion restating the regulatory criteria, it failed to submit any tangible evidence concerning its undertaking to procure such a voting member⁸. Likewise, there is no evidence concerning its efforts to employ individuals in the same discipline to oversee its certification process. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190)).

III. The applicant failed to submit evidence showing that it meets the eligibility standards set forth at 8 C.F.R. § 212.15(k)(2)(i).

The AAO concurs with the director's decision and HHS' recommendation that there is insufficient evidence that the applicant's staff possesses the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

As noted above under Section I in detail, no corroborating evidence was provided concerning the applicant's staff and only vague assertions made about the types of individuals the applicant hoped to hire. As also noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190)).

IV. The applicant failed to submit evidence showing that it meets the eligibility standards set forth at 8 C.F.R. § 212.15(k)(3)(iii).

⁷ For example, there is no evidence of correspondence, contact, agreement, or relationship with any health care professional association or organization or a list of candidates.

⁸ See notes 6 and 7, *supra*. Additionally, there is no evidence of correspondence, contact, agreement, or relationship with any individual without a relationship to the health care industry or with associations or organizations responsible for consumer protection or interests, nor a purported list of candidates or draft agreement it would execute between itself and that individual. This is not an exhaustive list of examples. The petitioner has submitted no evidence at all.

The AAO concurs with the director's decision and HHS' recommendation that there is insufficient evidence that the applicant will conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

HHS considered the following from the applicant's response:

The [applicant] will conduct studies to substantiate the reliability and validity of the evaluation and examination process. The [applicant] will set in place an ongoing training and motivation program for both Examiners and Directors to keep them apprised of changes and modifications in the credentialing and visa approval process which will occur on [an] as needed/monthly basis.

HHS determined that it was "unable to determine how the applicant implements its reliability and validity studies of the evaluation and examination mechanisms, including the related procedures and policies."

The AAO also notes that the applicant did not address this standard other than to deflect its obligation to substantiate the reliability and validity of the evaluation/examination mechanisms by stating that it would rely upon any foreign health care worker applicant's test results from NCLEX or CGFNS, ICHP, or CES. It referenced a quality control department within its organization, but that department was tasked with reviewing its internal certification procedures for accuracy, not for substantiating the reliability and validity of the evaluation/examination mechanisms. Even if its quality control department would be tasked with that objective, insufficient evidence was submitted to establish that the applicant would conduct studies to substantiate the reliability and validity of the evaluation/examination mechanisms. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190)).

V. The applicant failed to submit evidence showing that it meets the eligibility standards set forth at 8 C.F.R. §§ 212.15(k)(4)(iii) and (vii).

HHS determined that the applicant failed to provide a response enabling it to evaluate whether or not the applicant will implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable and that each foreign health care worker applicant's examination results are held confidential with delineated circumstances under which the worker's certification status could be made public.

The applicant claims on appeal that its quality assurance department would be responsible for the review of accuracy for eligibility criteria of each foreign health care worker applicant, and relies upon the NCLEX's worldwide availability to eliminate the cost or necessity of a pre-test evaluation. The applicant also states that since it would not be administering pre-tests, and directing foreign health care workers to take NCLEX or CGFNS/ICHP tests, it does not need to meet the criteria at 8 C.F.R. § 212.15(k)(4)(vii). The applicant misconstrues its obligations under both of these standards. The applicant has not provided enough information or evidence concerning its policy and procedures for ensuring and maintaining foreign health care worker applicants' confidentiality within its business entity. It briefly described Internet access for results but did not provide further elaboration on protecting confidential data on that site. Although the applicant asserted that it would not be biased or discriminate, it did not submit any evidence of its criteria and application procedures⁹. Again, as noted

⁹ For example, a copy of its brochure, application, instructions, or other information or evidence that would be

above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190)).

VI. The applicant failed to submit evidence showing that it meets the eligibility standards set forth at 8 C.F.R. § 212.15(k)(8)(iv).

The AAO concurs with the director's decision and HHS' recommendation that there is insufficient evidence that the applicant will establish performance outcome measures tracking the passage rate and ability of its certificate holders to pass United States licensure or certification examinations.

The applicant states that since most applicants would take NCLEX at overseas locations, pre-testing would become obsolete, and that it has made arrangements with Assessment Technologies Institute (ATI) to utilize their pre-testing facilities once ATI is approved to offer pre-testing services by CIS. Additionally, the applicant states that it would make sure that all its health care worker applicants had passed NCLEX or a pre-test prior to issuing a certificate. The applicant did not address, however, a sustainable process, with measurable results, that analyzes the rate of its certificate holder's passage of U.S. licensing examinations. The AAO notes that although the applicant stated that it intended to issue health care worker certificates to all seven health care professions, many of which would need to take licensure examinations after receiving a health care worker certificate, it did not address this issue in a context other than for the nursing profession. NCLEX may dispense with testing for nurses, but it does not dispense with tracking passage rates with a measurable procedure accessible and reviewable by CIS or HHS and does not address the issues of other health care professions. Additionally, the applicant provided no corroborating evidence of its relationship or arrangement with ATI, but even if it could, its appellate assertion is non-responsive to the standard's criteria. Again, as noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190)).

HHS also raised the issue of the applicant's use of and reliance upon CGFNS to prove its eligibility to become an organization authorized to issue certifications to health care workers with respect to standards delineated at 8 C.F.R. §§ 212.15(k)(1)(ii)(C), (2)(iii), (4)(iv) and (v), (5)(i) and (ii), and (6)¹⁰. The AAO quoted the applicant's

submitted to its prospective clients.

¹⁰ (1) *Structure of the organization*. . . (ii)(C) The organization must also be independent in all decision making matters pertaining to evaluations and/or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening process; funding, spending, and budget authority related to the operation of the certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

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(2) *Resources of the organization*. . . (iii) If the health care field is one for which a majority of the states require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of states.

representations above with its initial application concerning “its utilization,” “dependence upon,” and “adoption of” CGFNS, CES, and ICHP’s testing sites and review procedures. HHS’ analysis that the applicant’s language implied a relationship with CGFNS, and CGFNS’ statement clarifying that no relationship exists, supports the determination that the applicant was trying to procure eligibility on the basis of a claimed relationship with already qualified entities. The applicant’s appellate assertions that it was misunderstood and that it would not provide the services provided by CGFNS, CES, or ICHP, and that it would merely refer its foreign health care worker applicants to CGFNS, CES, or ICHP, is insufficient to overcome the explicit language in its initial application. Additionally, while NCLEX may dispense with pre-testing services provided by CGFNS, CES, or ICHP, this is not an argument that adequately explains the misrepresented relationship with those entities. Thus, the AAO concurs with the director that the applicant has failed to submit sufficient evidence or information to meet the eligibility standards delineated at 8 C.F.R. §§ 212.15(k)(1)(ii)(C), (2)(iii), (4)(iv) and (v), (5)(i) and (ii), and (6).

To prove its case, the applicant made many assertions without any corroborating evidence. It merely submitted printed screens from websites of other organizations authorized to issue certifications to health care workers on appeal. Thus, to summarize the detailed decision above, the applicant has failed to provide information and evidence as a good faith showing that it meets the majority of the standard criteria.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.

* * *

- (4) *Responsibilities to applicants applying for an initial certificate or renewal.* . . . (iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.
- (v) The organization shall report examination results to applicants in a uniform and timely fashion.

* * *

(5) *Maintenance of comprehensive and current information.*

- (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.
- (ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

- (6) *Ability to conduct examinations fairly and impartially.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.