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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2004
LIN-02-188-51069

IN RE: Petitioner: [redacted]
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:

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

The petitioner is a hospital staffing service. It seeks to permanently employ the beneficiary 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, Schedule A, Group I. The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position as of the priority date of the visa petition and denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

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. Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In this case, the petitioner filed an Immigrant Petition for Alien Worker (Form I-140) for classification of the beneficiary under section 203(b)(3)(A)(i) of the Act as a registered nurse on May 17, 2002. Aliens who will be permanently employed as professional nurses are listed on Schedule A as occupations set forth at 20 C.F.R. § 656.10 for which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed. Also, according to 20 C.F.R. § 656.10, aliens who will be permanently employed as professional nurses must have (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or (2) hold a full and unrestricted license to practice professional nursing in the [s]tate of intended employment. An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA-750 at Part A) in duplicate with the appropriate Citizenship and Immigration Services (CIS) office.

With the petition, the petitioner submitted a CGFNS certificate issued to [redacted] in April 1992. The beneficiary's name, however, is [redacted] Because the evidence was insufficient to prove that the beneficiary had her CGFNS certificate, the director requested additional evidence on August 16, 2002. The director's request for evidence noted the name discrepancy and required an explanation, clarification, and/or evidence of the beneficiary's relationship to the holder of the CGFNS certificate submitted into the record of proceeding. In response, the petitioner submitted a CGFNS certificate issued to the beneficiary in her own name on August 7, 2002.

The director determined that the evidence submitted did not establish that the beneficiary was qualified for the proffered position as of the priority date, and, on June 24, 2003, denied the petition. The director noted that the CGFNS certificate issued to the beneficiary was dated after the filing of the petition, thus making her ineligible for the benefit sought at the time of filing.

On appeal, the petitioner states that it has no knowledge of [redacted] and she is not the nurse petitioned for.

A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The regulation at 20 C.F.R. § 656.10 clearly requires proof of a beneficiary's passage of the CGFNS examination or a state license as proof they are qualified for proffered positions under Schedule A, Group I classification as a registered nurse. In this case, the petition was filed on May 17, 2002 but the beneficiary's CGFNS certificate is dated August 7, 2002, which is past the date of the petition's filing, which is the priority date. Thus, since a petition may not be approved it the beneficiary was not qualified at the priority date, in this case, the petitioner has not established that the beneficiary was qualified for the proffered position at the priority date, and the petition must be denied. The beneficiary simply did not have her CGFNS qualification prior to filing the instant petition and thus was ineligible for the benefit sought.

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 not that burden.

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.