U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 01 220 52063 Office: NEBRASKA SERVICE CENTER Date: JUL 8 2004

[redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: 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:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the petition is approved.

The petitioner is a nursing care facility and home. It seeks to employ the beneficiary permanently in the United States as a nursing coordinator. The petitioner asserts that the beneficiary qualifies for certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The petitioner submitted the Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140) to Citizenship and Immigration Services (CIS), formerly the Service or the INS. *See* 20 C.F.R. § 656.22 (a).

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 or seasonal nature, for which qualified workers are not available in the United States.

Eligibility in this matter turns on the petitioner's qualification for a blanket labor certification, in respect to the beneficiary, as of priority date. Employment-based petitions depend on priority dates. For Schedule A petitions, the filing of the I-140 and ETA 750 with CIS establishes the priority date. *See* 8 C.F.R § 204.5(d), 20 C.F.R. 656.22(a). The petition must be accompanied by the documents required by the particular section of the regulations under which it is submitted. *See* 8 C.F.R. § 103.2(b)(1). The petition's priority date in this instance is April 30, 2001. The beneficiary's salary as stated on ETA 750 is $50,000 per year.

The petitioner initially submitted five (5) exhibits in support of the I-140 and ETA 750. The director made no further request for evidence and proceeded directly to a decision dated February 4, 2002.

The director conceded that an alien, whose occupation is within Schedule A, will qualify for a labor certification, if the alien will engage in the occupation described in the job offer. Notwithstanding all that, the decision never discussed the job offer. Instead, the decision simply concluded that the scope of 20 C.F.R. § 656.10(a)(2), defining Schedule A professional nurses, could not include the occupation of nursing coordinator. Since the nursing coordinator could not be a Schedule A occupation, the director reasoned that no Schedule A labor certification could be had and, thus, denied the petition.

Counsel provided, with the appeal, an alternative motion to reopen and reconsider and brief to the director (NSC brief) with two (2) exhibits, and, later, to the AAO, a brief and evidence with three (3) exhibits (AAO brief).

The NSC brief emphasized that the ETA 750 offered a position with supervisory and administrative work that, however, depended on the use of nursing skills. Counsel specified care plans as reliant on medical history and patient evaluation, as well as resident reviews and the monitoring and evaluation of other registered nurses on teams. The NSC brief flatly concluded that nursing coordinator positions, therefore, were registered nurse positions.

In the AAO brief, counsel adds that the Florida SESSA classified the nursing coordinator position under occupational group no. 075, registered nurses, from the *Dictionary of Occupational Titles* (4th ed.) (DOT). In the course of a prevailing wage determination, the petitioner's request specified skill level 2 duties for the beneficiary's position as a public health nurse, supervisor ([redacted] Counsel asserts that the SESSA action compels the classification of the position for the beneficiary under Schedule A. Only the determination of CIS has conclusive weight and finality for inclusion in Schedule A. *See* 8 C.F.R. § 656.22(e)(2).

Counsel demonstrates persuasively that DOT occupational group 075 identifies registered nurse positions and, equally, obviates physical therapists, for purposes of the definition of professional nurses in 20 C.F.R. § 656.3. Counsel contends establishes that the DOT occupational group [redacted]e., nurse supervisor, community health nursing, indeed, includes the nursing coordinator, as described in the instant ETA 750.

Convincing authority recognizes, as registered nurses, nursing care facility nurses and nurse supervisors, with duties similar to those set forth in the petitioner's ETA 750. *See* Bureau of Labor Statistics, U.S. Department of Labor (DOL), *Occupational Outlook Handbook*, 2004-2005 Edition, Registered Nurses, page 301 at 302. Moreover, the director did not request any clarification, either of the job duties in Form ETA 750 or of their pertinence to professional nurses' duties.[1]

The evidence of the beneficiary's qualifications and experience do not raise any doubt that the beneficiary will engage in the intended occupation and stated job, as found in ETA 750. The job reflects positions of registered nurses, nursing care facility nurses and nurse supervisors, within *Occupational Outlook Handbook* categories.

The director has raised no other issue. The director accepted, and the AAO takes no exception to, the petitioner's financial data. Its 620 employees exempt it from the generally prescribed types of proof of the ability to pay the proffered wage. *See* 8 C.F.R § 204.5(d). The petitioner qualified the beneficiary for Schedule A classification.

The director will find the beneficiary qualified for Schedule A classification as a registered nurse and forward the copy and requisite data with the date of this decision of the AAO to the Director, United States Employment Service, or other designated party. *See* 20 C.F.R. § 656.22(f).

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 that burden.

ORDER: The petition is approved and the appeal is sustained.

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[1] Explicit provisions permit the director to ask the Department of Labor for an advisory opinion in case of doubt. *See* 8 C.F.R. § 656.22(e)(1).