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

U.S. Citizenship and Immigration Services

[redacted]

SEP 09 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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:

[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 employment based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for additional evidence and entry of new decision.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a nursing facility. It seeks to employ the beneficiary permanently in the United States as a licensed practical nurse. The petitioner asserts that the beneficiary qualifies for a blanket labor 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). The director determined that the petitioner had not established that the notice of filing the Application for Alien Certification was properly provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

On appeal, the petitioner, through counsel, submits additional information and asserts that it satisfied the applicable requirements for the position offered.

Section 203(b)(3)(A)(i) of 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.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a licensed practical nurse. Aliens who will be employed as professional nurses are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.10 with respect to 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.

The regulation at 8 C.F.R. § 204.5(a)(2) provides that a properly filed Form I-140, must be "accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien's occupation qualifies as a shortage occupation within the Department of Labor's Labor Market Information Pilot Program." "The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an application for Schedule A designation or with evidence that the alien's occupation is a shortage occupation with the Department of Labor's Labor Market Information Pilot Program shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [Citizenship and Immigration Services (CIS)]." 8 C.F.R. § 204.5(d).

In this case, the director initially determined that the petitioner had filed the I-140 without an individual labor certification from the Department of Labor. On October 8, 2002, the director rejected the I-140 and informed the petitioner that if it wished to resubmit the petition, it must provide the ETA 750 with the I-140.

By letter, dated October 21, 2002, counsel's office asserted that the immigrant visa petition did not require an

individual labor certification because it was submitting the petition based on the beneficiary's qualification for a blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The letter cites 20 C.F.R. § 656.22(c)(22) as a basis for claiming that the beneficiary qualifies for a blanket labor certification. That regulation allows employers to seek Schedule A labor certification for beneficiaries qualified as professional nurses. It requires, as part of the labor certification application, a petitioner to file documentation showing that the alien either has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination or that she possesses a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

Following receipt of counsel's letter, on January 27, 2003, the director acknowledged receipt of the petition under No. EAC0302354465 and requested that the petitioner submit evidence that it had properly provided a notice of filing Form ETA-750, to the bargaining representative or had posted the job opportunity at the employment facility or location of the employment pursuant to 20 C.F.R. § 656.20(g)(1).

Upon receipt of the petitioner's response, the director determined that the petitioner's evidence failed to establish that it had properly provided notice of the job opportunity consistent with the requirements of blanket labor certification under Schedule A, Group I, and denied the petition on May 13, 2003.

On appeal, counsel submits an affidavit from the petitioner and a copy of a job notice for a licensed practical nurse. The petitioner states that it had properly completed the posting of the notice before it filed the I-140 in October 2002.

The AAO finds that the director was initially correct to question the lack of an individual labor certification with this petition. Licensed practical nurses are not within an occupation covered by the provisions of 20 C.F.R. § 656.10(a)(2), which limits blanket labor certification under Schedule A, Group I to those who will be employed as "professional nurses." The regulation at 20 C.F.R. §656.3 states:

> *Professional nurses* means persons who apply the art and science [of] nursing, which reflects comprehension of principles derived from the physical, biological, and behavioral sciences. Professional nursing generally includes the making of clinical judgements concerning the observation, care, and counsel of persons requiring nursing care; and administering of medicines and treatments prescribed by the physician or dentist; the participation in activities for the promotion of health and the prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as: obstetrics, surgery, pediatrics, psychiatry, and medicine. *This definition includes only those occupations within Occupational Group No. 075 of the Dictionary of Occupational Title[s] (4th ed.).* (Emphasis added).

The occupations within Occupational Group No. 075 of the *Dictionary of Occupational Titles* do not include licensed practical nurses. Licensed practical nurses are found under Occupational Group 079. United States Department of Labor, Employment and Training Administration, *Dictionary of Occupational Titles* (4th Ed. Rev. 1991), http://www.oalj.dol.gov/libdot.htm (accessed Sept. 1, 2004).

As the occupation of licensed practical nurse is not within the occupations available to be processed as a blanket labor certification, further discussion of the petitioner's compliance with notice of filing requirements, pertinent to that certification, is moot.

This case will be remanded, however, to the director to make the determination of whether the petitioner has actually secured an individual labor certification on behalf of the alien. Further inquiries may be warranted. If the petitioner has not obtained an individual labor certification from the Department of Labor, then the petition may be denied on that basis.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to conduct further investigation and request any additional evidence from the petitioner pursuant to the requirements of 8 C.F.R. § 204.5(g). Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision.