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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 3 0 2007
EAC 05 090 52641

IN RE: Petitioner:
Beneficiary: [redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a nursing registry. It seeks to employ the beneficiary permanently in the United States as a staff nurse/registered nurse. The director determined that the petitioner had not established that the beneficiary qualifies for an occupation listed in Schedule A, Group I (20 C.F.R 656), and, the petition is not otherwise supported by a certification by the U.S. Department of Labor, or evidence that the alien's occupation is within the Labor Market Information Pilot Program.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section 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 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 professional (registered nurse). Aliens who will be employed as nurses are listed on Schedule A. Schedule A is a list of occupations found at 20 C.F.R. § 656.10. The Director of the United States Employment Service has determined that an insufficient number of United States workers are able, willing, qualified, and available to fill the positions available in those occupations, 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 20 C.F.R. § 656.10(a)(2) specifies that professional nurses are among those qualified for Schedule A designation if they have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination or hold a full and unrestricted license to practice professional nursing in the state of intended employment.

The regulation at 20 C.F.R. § 656.22 states that the Application for Alien Employment Certification form shall include evidence that notice of filing the application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.20(g)(3) of this part.

The regulation at 20 C.F.R. § 656.20(g)(3) states that:

> Any notice of the filing of an Application for Alien Employment Certification shall:
>
> (i) State that applicants should report to the employer, not to the local Employment Service office;
>
> (ii) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity; and
>
> (iii) State that any person may provide documentary evidence bearing on the application to the local Employment Service Office and/or the regional Certifying Officer of the Department of Labor.

The regulation at 20 C.F.R. § 656.22(c)(2) states:

> An employer seeking a Schedule A labor certification as a professional nurse (§ 656.10(a)(2) of this part) shall file, as part of its labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment.

On December 20, 2002, the Office of Adjudications of the Citizenship and Immigration Services (CIS) issued a memorandum instructing Service Centers to accept a certified copy of a letter from the state of intended employment stating that the beneficiary has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) and is eligible to receive a license to practice nursing in that state in lieu of either having passed the CGFNS examination or currently having a license to practice nursing in that state.

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 U.S. Citizenship and Immigration Services Office [CIS]. *See* 20 C.F.R. § 656.22(a). The Application for Alien Employment Certification shall include.

1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.
2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

See 20 C.F.R. § 656.22(b).

The regulation at 20 C.F.R. § 656.22(e) states in part:

> An Immigration Officer shall determine whether the employer and alien have met the applicable requirements of Sec. 656.20 of this part, of this section, and of Schedule A ...
>
> (2) The Schedule A determination of INS [CIS] shall be conclusive and final. The employer, therefore, may not make use of the review procedures at Sec. 656.26 of this part.

In this case, the I-140 petition was filed on February 4, 2005. According to the petition, the petitioner employs 26 employees and it was established December 11, 2000. Accompanying the petition and found in the record of proceeding are the following documents: an Application for Alien Employment Certification (Form ETA 750) for a Schedule A occupation, registered nurse; the beneficiary's college diploma and transcript evidencing her attainment of a Bachelor of Science degree in Nursing from United Doctors Medical Center, Quezon City, the Republic of the Philippines; the petitioner's U.S. federal Form 1120S tax return for 2003; the beneficiary's professional licensing documents from the Republic of the Philippines; a statement of posting by the petitioner dated December 28, 2004; a certification of posting; a request for evidence issued by the director dated March 4, 2005; a response from the petitioner by cover letter dated May 25, 2005; and, an unsigned, unattested statement from The Oregon State Board of Nursing dated May 24, 2005 stating that the beneficiary passed the National Council of State Boards of Nursing licensing exam (NCLEX) examination.

Since the petitioner on appeal stated that it was submitting additional evidence, the AAO requested it from the petitioner on April 6, 2007. The petitioner submitted copies of the following documents: a cover letter from the petitioner dated April 9, 2007; the beneficiary's State of Connecticut license as a registered nurse current through June 30, 2006; the beneficiary's professional licensing documents from the Republic of the Philippines; and, the beneficiary's college transcript evidencing her attainment of a Bachelor of Science degree in Nursing from United Doctors Medical Center, Quezon City, the Republic of the Philippines.

In summary, according to the director's decision, documentation submitted with the original filing did not include documentation that the beneficiary had passed the Commission on Graduates of Foreign Nursing schools (CGFNS) examination. The petitioner has submitted instead an unsigned, unattested statement from The Oregon State Board of Nursing dated May 24, 2005 stating that the beneficiary passed the National Council of State Boards of Nursing licensing exam (NCLEX) examination.

As already noted, CIS issued a memo instructing Service Centers to accept a certified copy of a letter from the state of intended employment stating that the beneficiary has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) and is eligible to receive a license to practice nursing in that state in lieu of either having passed the CGFNS examination or currently having a license to practice nursing in that state.

A review of the Application for Alien Employment Certification, USDOL Form ETA-750, Part A, section 15, states the special requirement as "Licensed as a R.N. in the State of N.J." (New Jersey). In this instance, the petitioner did not submit a letter from the state of intended employment that according to USDOL Form ETA-750, Part B, Section 8 is New Jersey. There is no evidence submitted that the beneficiary is eligible to receive a license in New Jersey in lieu of either having passed the CGFNS examination and no evidence that she currently has a license to practice nursing in New Jersey.

On appeal counsel asserts, "Documentation overcoming reasons for denial will be submitted pending receipt from the Board of Nursing. Please be advised that the N.J. Board of Nursing is requesting that the beneficiary has a current visa. Hopefully we can address this problem as well."

As stated above, the necessary requested documentation has not been submitted.

All the evidence submitted by counsel is dated or effective after the priority date in this matter which is February 4, 2005. *See* 8 CFR § 204.5(d). A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal could be summarily dismissed.

The petitioner may re-apply once it obtains the necessary documentation mentioned above that was not submitted with the petition or on appeal. A petitioner must provide reasonably obtainable documentation when requested. *See Gencorp*, 87-INA-659 (Jan. 13, 1988) (*en banc*); *See also Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), and, *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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 met that burden.

ORDER: The appeal is dismissed.