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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAR 01 2007
SRC 05 224 50111

IN RE: Petitioner: [REDACTED]
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 Director, Texas Service Center, approved the instant employment-based visa petition and certified that decision to the Administrative Appeals Office (AAO). The decision of approval will be affirmed.

The petitioner appears to have retained counsel. In a letter dated August 3, 2005 the petitioner's ostensible counsel stated that he was submitting a Form G-28 Notice of Entry of Appearance, but no such document appears in the record. The record, therefore, contains no indication that the petitioner has consented to be represented. All representations will be considered but the decision in this matter will be furnished only to the petitioner.

A petition under the instant visa category must be accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor (DOL), by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the DOL's Labor Market Information Pilot Program, as required by 8 C.F.R. § 204.5(l)(3)(i).

The petitioner is a hospital. It seeks to employ the beneficiary permanently 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. § 656.5(a), commonly referred to as Schedule A. A Form 9089 Application for Permanent Employment Certification accompanied the petition.

The regulation at 20 C.F.R. § 656.5(a)(2) states 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.

In the instant case the petitioner submitted a certificate showing that the beneficiary was awarded CGFNS certification during December of 1992. The director found that the requirement of 20 C.F.R. § 656.5(a)(2) was thereby satisfied and approved the petition.

The director also noted, however, that 8 C.F.R. § 212.15(n)(4)¹ requires that an individual's certification be used for any admission into the United States, change of status within the United States, or adjustment of status within five years of the date that it was issued, and that the beneficiary's CGFNS certification was issued more than five years before. The director found that this limitation did not affect approval of the instant visa petition, but certified that decision to this office.

The director is correct. The regulation in the instant case merely requires that the beneficiary possess a CGFNS certificate. The five-year limitation in 8 C.F.R. § 212.15(n)(4) pertains to entry and adjustment.² The instant visa petition was correctly approved.

¹ Actually, the director miscited 8 C.F.R. § 212.16(n)(4) for that proposition.

² The beneficiary should bear in mind, however, that before she can use the CGFNS certification for the purposes described in 8 C.F.R. § 212.15(n)(4) she must have it renewed or reissued with a more current date.

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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 decision of approval is affirmed.