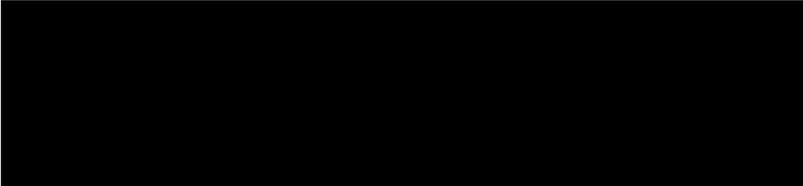


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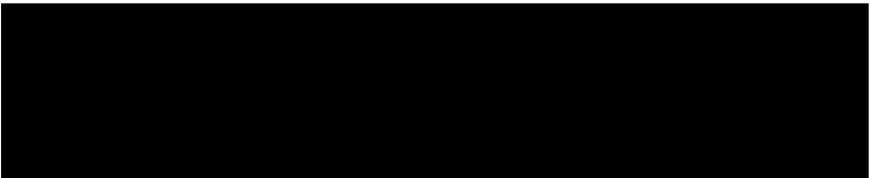
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FILE: EAC 05 241 52449 Office: VERMONT SERVICE CENTER Date: **FEB 21 2008**

IN RE: Petitioner: 
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a foot care medical clinic. It seeks to employ the beneficiary as a nurse/assistant in the State of Maryland. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On November 2, 2006, the director denied the petition determining: (1) that the record did not establish that the proffered position is a specialty occupation; and (2) that the record did not contain evidence that the beneficiary is a licensed registered nurse eligible to practice nursing in the State of Maryland. On appeal, counsel for the petitioner asserts that the proffered job qualifies as a specialty occupation and that the beneficiary is qualified as this petition is only a request for a change in employer.

The record of proceeding before the AAO contains: (1) the Form I-129 filed September 1, 2005 and supporting documentation; (2) the director's January 11, 2006 request for further evidence (RFE); (3) the petitioner's March 24, 2006 response to the director's RFE and documentation; (4) the director's November 2, 2006 denial letter; and (5) the Form I-290B, counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

In a July 10, 2005 letter appended to the petition, the petitioner states that it requires the services of at least one nurse and as the nurse is the doctor's assistant, the nurse must be a graduate nurse with specialization in medical and surgical wound care. According to the petitioner's July 10, 2005 letter, the duties to be performed by the beneficiary, under the supervision and direction of the doctors in the practice, would include:

Assist the physician in all medical & surgical procedures that are being performed in the medical clinic, prepare patient for pre-operative & post-operative procedure. Carry out all doctor's orders & instructions in patient care. Take all vital signs before & after procedure. Perform wound dressing after surgery. Measure the size of the patient's wound and keep a record each week of follow-up. Give thorough instructions to patient or family member [on] how to take care of the surgical wound, specially Diabetic patients that needs [sic] more attention in wound healing to control infection and avoid amputation. Schedule follow-up visit in a timely manner after surgery. Give proper instructions on how to take prescribed oral medication & topical medication for the wound. Perform surgical suture removal as per doctor's order & instructions. Educate patients in Diabetic foot care & how to use the Therapeutic footwear device & equipment that was prescribed by the doctor. Operate all clinical instruments available in the clinical facility. Attends current seminar & workshops available to increase knowledge and expertise in patient care.

The petitioner listed the beneficiary's duties for a typical week as:

1. Prepar[e] and [read] all patient's records in schedule for the day & determine what kind of procedure or treatment to be performed by the physician.
2. Sterilize and prepare all instruments to be used for the day, make sure the treatment room is well equipped with all instruments necessary.
3. Prepar[e] & [inform] patient for the procedure or treatment to be done.
4. Assist physician/surgeon during the entire surgical & medical procedure being performed.
5. Secure the wound dressing properly under the supervision & direction of the physician.
6. Give patient or person responsible for patient's care detailed instructions in wound care.
7. [Document/Chart] the entire procedure done.
8. Prepare specimens to send for laboratory test, and prepare patient's paperwork for laboratory examination if ordered by the doctor as necessary.

The petitioner also provided a copy of its offer of employment to the beneficiary; noted that the beneficiary had graduated from the University of Santo Tomas, Philippines with a bachelor of science degree in nursing in 1987; noted that the beneficiary had obtained a second bachelor's degree specializing in respiratory therapy from Emilio Aguinaldo College in 1990; and indicated the beneficiary is a licensed nurse in the Philippines and would register and sit for the nursing board examination in the United States. The petitioner also submitted a copy of a May 17, 2004 credential evaluation prepared by WES indicating the beneficiary has the equivalent of a bachelor's degree in nursing and a bachelor's degree in respiratory therapy from a regionally accredited institution in the United States.¹ The petitioner further submitted a copy of an approval notice for the beneficiary's classification as an H-1B nonimmigrant for a different petitioner valid from May 1, 2003 to August 4, 2005.

In response to the director's RFE, regarding the beneficiary's licensure in the state of intended employment, the petitioner again indicated that the beneficiary would register and sit for the nursing board examination in the United States, that the beneficiary was a licensed nurse in the Philippines, and that WES (World Education Services) had evaluated the beneficiary's credentials. The petitioner also repeated the beneficiary's proposed duties in a typical workweek. Counsel for the petitioner in an April 3, 2006 letter in response to the director's RFE stated:

We would like to clarify that the beneficiary is not seeking an H-1B approval as a Registered Nurse to work with the employer/petitioner, [the petitioner]. Thus a state license is not required for her to perform the services.

Counsel asserted that the State of Maryland does not require the licensure of the beneficiary, as the beneficiary would perform services under the close supervision and control of the doctors of the practice. Counsel contended that the beneficiary does not claim to be an independent nurse and would not perform the duties of a professional nurse that requires a license.

¹ The WES evaluation notes that the evaluation is valid only when the official WES stamp is affixed on each page. The WES evaluation in the record does not bear such a stamp.

On November 2, 2006 the director denied the petition. The director determined that the state of intended employment did not require registered nurses to hold bachelor's degrees; that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that a bachelor's degree is usually necessary for administrative nursing positions and as a prerequisite for admission to graduate nursing programs but that the record did not include evidence that the proffered position is a nursing administrative position or an advanced practice nurse; that the petitioner's requirement of a bachelor's of science degree in nursing is self-imposed; and that the petitioner had not established that the proffered position required the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific specialty. The director also noted that counsel's assertion that the beneficiary would not act as a nurse conflicted with the petitioner's request to employ a nurse. The director found that the record did not contain evidence that the beneficiary was a licensed registered nurse in the State of Maryland or other evidence that the beneficiary is immediately eligible to practice registered nursing in the State of Maryland.

On appeal, counsel for the petitioner asserts that the beneficiary's prior approval in H-1B classification as a respiratory therapist for a different petitioner that required a graduate nurse with specialization in respiratory care allowed the beneficiary to work. Counsel acknowledges the beneficiary has not been licensed in the United States as a respiratory therapist or as a nurse. Counsel contends that as the beneficiary continues to work in medical care although with a different petitioner and the prior petition was approved even though the beneficiary did not have a license, the petition in this matter should also be approved. Counsel repeats the petitioner's previous description of the beneficiary's proposed duties for the petitioner in this matter and claims that the duties are so critical and complex and beyond the ordinary that the duties could not be performed with less than a bachelor's degree in the medical field. Counsel avers that it is the petitioner's surgeon in this matter who knows the best degree for the proposed position and that the surgeon in this matter decided to hire the beneficiary who has both a nursing and a respiratory therapist degree. Counsel asserts that the petitioner has only hired persons with professional credentials in the past and hiring an individual with the beneficiary's credentials is consistent with its past hiring practices.

Preliminarily, the AAO acknowledges that the beneficiary previously had been accorded H-1B classification as a respiratory therapist for another petitioner. However, the petitioner in this matter is requesting the beneficiary's services, not as a respiratory therapist but as a nurse. Thus, the instant petition is materially different from the previously filed petition in both the scope of duties and the fact that a different organization submitted the prior petition. In addition, this record of proceeding does not contain all of the supporting evidence submitted to the Vermont Service Center in the prior matter. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine that the previously approved petition is parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). If the other nonimmigrant petition was approved based on identical facts that are contained in the current record, that approval would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. Furthermore, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that

CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The first issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the statutory and regulatory requirements for a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner has not established that the proffered position fulfills any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Handbook* for information about the duties and educational requirements of particular occupations. The *Handbook* discusses the duties of registered nurses (RNs) as follows:

[P]erform basic duties that include treating patients, educating patients and the public about various medical conditions, and providing advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help to perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

The description of the duties of the proffered position aligns with that of a typical nursing position, a position that does not require a four-year BSN degree. The petitioner indicates that it requires that the incumbent: "prepare patient for pre-operative & post-operative procedure;" "[t]ake all vital signs before & after procedure;" "[p]erform wound dressing after surgery;" "[m]easure the size of the patient's wound and keep a record each week of follow-up;" "[g]ive thorough instructions to patient or family member [on] how to take care of the surgical wound;" "[s]chedule follow-up visit in a timely manner after surgery;" "[g]ive proper instructions on how to take prescribed oral medication & topical medication for the wound;" "[p]erform surgical suture removal as per doctor's order & instructions;" "[e]ducate patients in Diabetic foot care;" and "[o]perate all clinical instruments available in the clinical facility." These are duties that correspond to the *Handbook's* general overview of the duties of an RN, an individual involved in providing patient care.

The *Handbook* reports that there are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in nursing (ADN), and a diploma. The *Handbook* indicates that many individuals begin their employment as staff nurses with an ADN or diploma and later study for a BSN. The petitioner's description of duties resembles most closely the duties of a staff nurse performing routine duties involved in the critical function of patient care. The petitioner has not provided any evidence that the position requires the individual in the proposed position to have a bachelor's of science degree in nursing.

The petitioner has not provided sufficient evidence to establish that the position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so

complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As observed above, based on the petitioner's description of duties, the position does not require a four-year degree as a minimum for entry into the proposed nursing position. The petitioner has not presented evidence that the industry's professional association has made a degree a minimum entry requirement of a nursing position consisting of the duties described by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Neither has the petitioner presented letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, the petitioner has not established that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, counsel for the petitioner claims that the duties are so critical and complex and beyond the ordinary that the duties could not be performed with less than a bachelor's degree in the medical field. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has described a general nursing position and has not provided evidence of any specific element that requires a degree other than a general associate degree in nursing. The AAO acknowledges counsel's discussion of the serious nature of wounds and ailments of the foot associated with diabetes and the Internet article on the subject of foot care for people with diabetes that stresses the seriousness of the issue of foot care for those individuals with diabetes. However, any medical condition that may threaten death or trauma requires adequate patient care. As reported in the *Handbook*, nurses with an associate degree in nursing are well qualified to perform these duties. Again, the description of the proposed duties do not extend beyond the routine patient care expected and required of a nurse with an associate degree in nursing. The petitioner has not established the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific discipline.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The petitioner's desire to employ an individual with a bachelor's degree in nursing is noted but such a desire does not establish that the position is a specialty occupation. CIS must still examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. *Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the

title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. *See id.* at 388.

The AAO reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas when determining whether the petitioner has satisfied this criterion. The AAO acknowledges counsel's claim on appeal that the petitioner's doctor employed his wife who held a nursing degree to assist the doctor with his surgical work at the facility. However, the record does not contain copies of previous employees' diplomas, their dates of employment, or evidence that the petitioner's previous nurse/assistant had a bachelor's of science degrees in nursing. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The evidence in the record is also inadequate to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Again, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a registered nurse nor, according to the *Handbook*, is the knowledge required to perform the duties of a registered nurse usually associated with the attainment of a bachelor's or higher degree in nursing. Upon review of the totality of the record, the petitioner has not established that this position fulfills the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the record, the record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. Therefore, the AAO will not disturb the director's denial of the petition.

The second issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a nurse/assistant in the State of Maryland. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The Form ETA 9035E, Labor Condition Application (LCA) indicates that the petitioner plans to employ the beneficiary in Easton, Maryland. Thus, it is necessary to review the Maryland laws and regulations governing the practice of nursing in its State. The Nurse Practice Act found in Maryland Statutes at Title 8 of Health Occupations states:

§8-301.

- (a) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice registered nursing in this State.
- (b) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice licensed practical nursing in this State.
- (c) This section does not apply to:
 - (1) A student enrolled in an approved education program while practicing registered nursing or licensed practical nursing in that program;
 - (2) An individual employed by the federal government to practice registered nursing or licensed practical nursing while practicing within the scope of that employment, if the individual is authorized by any state to practice registered nursing or licensed practical nursing;
 - (3) An individual permitted to practice registered nursing or licensed practical nursing under rules and regulations adopted by the Board, if the individual:
 - (i) Otherwise has qualified to practice registered nursing or licensed practical nursing in any other state or country and is in this State temporarily;
 - (ii) Has an application for a license pending before the Board:
 - 1. But has not taken the examination under this title; or
 - 2. Has taken an examination under this title, but the results of the examination are not yet known; and
 - (4) An individual who is assigned by the American Red Cross to a disaster situation in this State to practice registered nursing or licensed practical nursing, if the individual is licensed to practice registered nursing or licensed practical nursing in another state.
- (d) *Multistate licensing privileges – Registered nursing* – A registered nurse who has been granted multistate licensing privileges by a party state to the Nurse Multistate Licensure Compact set forth in Subtitle 7A of this title may practice registered nursing in the State.
- (e) *Same – Practical nursing* – A licensed practical nurse who has been granted multistate licensing privileges by a party state to the Nurse Multistate Licensure Compact set forth in Subtitle 7A of this title may practice practical nursing in the State.

The AAO finds counsel's assertion that the proposed position is not a registered nurse position in response to the director's RFE, inconsistent with the petitioner's desire to hire a nurse and the duties of the position that correspond to the general duties of a registered nurse. Counsel's assertion to the contrary is without substantiating documentation. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The record does not establish that the beneficiary holds a nursing license, a temporary license, or a temporary practice letter authorizing her to practice registered nursing in the State of Maryland. The record does not establish that the beneficiary is exempt from performing the duties of a registered nurse without a license, temporary license, or temporary practice letter. Thus, the beneficiary is not qualified to perform the duties of the occupation.

The AAO also notes that the petitioner has provided an evaluation of the beneficiary's academic credentials that does not bear the required official WES stamp confirming the evaluation's validity. For this additional reason, the petitioner has not established that the beneficiary is qualified to perform the services of a registered nurse.

Beyond the decision of the director, the record does not establish that the beneficiary has obtained foreign health care worker certification under section 212(a)(5)(C) of the Act, which provides in pertinent part:

Uncertified foreign health-care workers. – Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services.

On July 25, 2003, the Department of Homeland Security (DHS) published a final regulation implementing this section of the Act. The rule establishes that certain nonimmigrant health care workers are required to obtain certification in accordance with section 212(a)(5)(C) of the Act. On September 22, 2003, the Associate Director for Operations issued a memorandum providing guidance to the final regulation and updating the Adjudicator's Field Manual AD 03-31. *Final Regulation on Certification of Foreign Health Care Workers: Adjudicator's Field Manual Update AD 03-31*; Memorandum of William R. Yates, Associate Director for Operations, CIS, DHS, (September 22, 2003) ("Yates Memo"). The Adjudicator's Field Manual was expanded to include a new chapter at 30.12. The revision of the Adjudicator's Field Manual at 30.12 in pertinent part reads:

(b) Health Care Occupations Requiring Certification. The health care occupations requiring certification are nurses (licensed practical nurse, licensed vocational nurses, and registered nurses), physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory

scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants.

The petitioner in this matter has not provided a certification from the Commission on Graduates of Foreign Nursing Schools or an independent credentialing organization approved for the certification of nurses as required by subsection (r) of section 212 of the Act. The regulation at 8 C.F.R. § 212.15(n)(2)(iii) requires that any application to extend the period of the alien's authorized period of stay while working in a covered health care worker occupation must include proof that the certification has been obtained. The record does not contain proof that such certification has been obtained. For this additional reason, the petition will not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.