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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: WAC 02 062 50894 Office: California Service Center Date: APR 15 2003

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]

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INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Ellen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a nursing facility. It seeks to employ the beneficiary permanently in the United States as a physical therapist. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification. The director determined that the petitioner had not established that the beneficiary is qualified to take the State's written licensing examination for physical therapists, or that he holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

On appeal, counsel submits additional evidence.

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.

The petitioner requested labor certification under Department of Labor Regulations at 20 C.F.R. § 656.10(a)(1), commonly referred to as Schedule A. This regulation states that labor certification may be granted to persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy.

On February 28, 2002, the director requested that the petitioner submit evidence that the beneficiary is qualified to take that State's written licensing examination for physical therapists or that he holds a full and unrestricted license to practice nursing in the state of intended employment.

In response, the petitioner submitted a letter, dated March 25, 2002, from the petitioner's administrator stating that the beneficiary is eligible to take California's licensing exam. The petitioner also submitted the report of an educational evaluator, which stated that the beneficiary received a bachelor of science in physical therapy in the Philippines which is equivalent to a bachelor of science in physical therapy awarded by a United States institution.

The director found the evidence insufficient to demonstrate that the beneficiary is qualified to take the state licensing examination and denied the petition.

On appeal, counsel submitted a letter, dated May 21, 2002, from the Physical Therapy Board of California stating that the beneficiary's application was approved and that he has been recommended to appear for the state licensing examination for physical therapists. That letter establishes that the beneficiary was qualified to take the licensing examination as of May 21, 2002.

Employment-based petitions are based on priority dates. The priority date is established when the petition is properly filed with the Service. 8 C.F.R. § 204.5(d). The petition must be accompanied by the documents required by the particular section of the regulations under which they are submitted. 8 C.F.R. § 103.2(b). In this case, the priority date is December 10, 2001.

The petition was not accompanied by evidence that the beneficiary qualified for classification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I, at the time the petition was filed. The evidence submitted on appeal demonstrates that the petitioner was qualified to take the examination as of May 21, 2002, but not as of the priority date of the petition, December 10, 2001.

In an immigrant visa petition, a petitioner must establish eligibility at the time the priority date is established. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Because the petitioner has not demonstrated that he was eligible at the time the petition was filed the petition may not be approved. 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.