U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

B6

[redacted]

File: WAC 02 105 50387 Office: CALIFORNIA SERVICE CENTER Date: FEB 11 2004

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

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 CIS 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.

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Robert P. Wiemann, Director
Administrative Appeals Unit

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

The petitioner is a health clinic. It seeks to employ the beneficiary permanently in the United States as a nurse research assistant/reviewer.

The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director determined that the position does not qualify for Schedule A designation and, therefore, must be accompanied by a valid labor certification approved by the Department of Labor. Because the labor certification submitted was not approved by the Department of Labor the director denied the petition.

On appeal, the petitioner submits a statement.

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 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 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.

20 C.F.R. § 656.22 provides, in pertinent part, that an employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA 750, Part A) in duplicate with the appropriate Immigration and Naturalization Service office. 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).

In this case, Form I-140 was filed on February 4, 2002. On April 3, 2002, the director requested that the petitioner submit evidence that the beneficiary had passed the CGFNS Examination or that she held a full and unrestricted license to practice nursing in the state of intended employment. The director also requested that the petitioner document the training and experience the beneficiary claimed.

In response, the petitioner provided a photocopy of the beneficiary's diploma and evidence of the beneficiary's work experience. The petitioner stated, however, that the beneficiary had not passed the CGFNS and had no state license. The petitioner further stated that the beneficiary would not be employed as a nurse.

The director noted that, since the proffered position is not a nursing position, it does not qualify for Schedule A designation. As such, the Form ETA 750 submitted with the petition, which was not approved by the Department of Labor, is invalid. The director denied the petition because it was not accompanied by a valid labor certification.

On appeal, the petitioner stated that the beneficiary has the skills needed to fill the proffered position, notwithstanding that she has not passed the CGFNS and is unlicensed. The petitioner further stated that she had been unable to locate a licensed nurse for the position, although she specified several papers in which she had advertised.

According to the petitioner's own admission, the proffered position is not a nursing position. As such, it does not qualify for a Schedule A designation, and the accompanying labor certification is invalid. The petitioner has not overcome the director's decision.

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.