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U.S. Department of Homeland Security
Citizenship and Immigration Services

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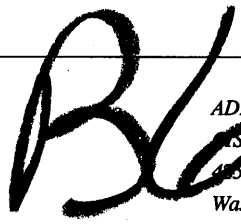


ADMINISTRATIVE APPEALS OFFICE
DHS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

MAR 0 2 2004

File: WAC 01 111 52270 Office: CALIFORNIA SERVICE CENTER Date:

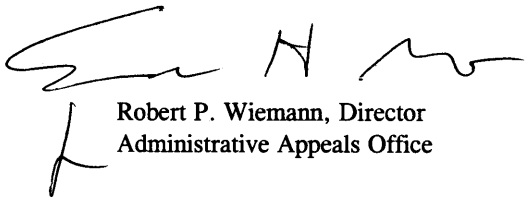
IN RE: Petitioner:
Beneficiary: [redacted]

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)

IN BEHALF OF PETITIONER:

[redacted]

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.



Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petition was accompanied by an application for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I.

The director determined that the petitioner had not established that the beneficiary had passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or that she holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment, and denied the petition accordingly.

On appeal, counsel states in a letter that, at the time of a request from the director for evidence, the beneficiary had passed the National Council Licensure Examination for Registered Nurses (NCLEX), but because of "administrative constraints" had not yet received her state license. With the appeal, he submits a copy of the beneficiary's license as a registered nurse, issued by the State of California on December 3, 2001.

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 regulation of the U.S. Department of Labor at 20 C.F.R. § 656.20 states:

> (a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification in duplicate with the appropriate [CIS] office.
> (b) The Application for Alien Employment Certification form 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 § 656.20(g)(3) of this part.

The regulation goes on to say at sub-paragraph (c)(2) that a Schedule A application for a professional nurse must be accompanied by "documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or that the alien holds a full and unrestricted license to practice nursing in the State of intended employment."

In this case, Form I-140 was filed on February 8, 2001. On August 5, 2001, 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.

In response, counsel submitted evidence that the beneficiary passed the NCLEX on July 26, 2001. Clearly, the beneficiary had not passed the NCLEX or the CGFNS examination, or had a full and unrestricted state license as of the filing date of the petition.

Employment-based petitions are based on priority dates. The priority date is established when the petition is properly filed with CIS. 8 C.F.R. § 204.5(d). A petition may not be approved if the beneficiary is not qualified as of the priority date. *Matter of Katigbak,* 14 I&N Dec.45 (Comm. 1971). In this case, the beneficiary was not qualified as of the priority date.

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.