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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 09 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:

[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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the petition will be approved.

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. The director, therefore, denied the petition for lack of a labor certification.

On appeal, counsel argues that the beneficiary is eligible for state licensure because she passed the CGFNS and submitted the CGFNS Certificate to CIS.

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 June 20, 2001. The petition was accompanied by a copy of a letter from CGFNS to the beneficiary, dated December 2000, stating that she had passed the November 8, 2000, CGFNS Qualifying Examination. A note at the bottom of the letter states that the letter "is not a CGFNS Certificate." Apparently, the director found the CGFNS letter to be unacceptable evidence, and, on September 14, 2001, he 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 a copy of the beneficiary's CGFNS Certificate issued on August 17, 2001. In his denial of the petition, the director noted that the certificate was issued after the filing date of the petition, and, therefore, the beneficiary was not qualified on the filing date.

On appeal, counsel asserts:

> We were specifically requested to supply the CGFNS Certificated [sic] only and no other documentation and we replied to this request in a timely manner. The date of issuance of the Actual Certificate is listed as two months after the date of the first filing of this petition. Yet nowhere in [CIS] codes on this matter is there a stipulation on a date requirement for the CGFNS Certificate. According to regulations, all that [CIS] should require is evidence that the beneficiary passed the CGFNS Examination, and this evidence was included in 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).

The petition was accompanied by evidence that the beneficiary had passed the CGFNS Examination. The Department of Labor regulations noted above do not require submission of a CGFNS Certificate, only that the petitioner present documentation establishing that the beneficiary has passed the examination. Clearly, the letter from CGFNS fulfills that requirement. Consequently, the beneficiary qualified for classification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I, as of the priority date of the petition.

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. Accordingly, the decision of the director will be withdrawn, and the petition will be approved.

ORDER: The appeal is sustained, and the petition is approved.