



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 15255765

Date: APR. 7, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a non-profit academic hospital, seeks to employ the Beneficiary as “Registered Nurse-Emergency-Executive Director.”¹ The organization requests his classification under the second-preference, immigrant category for members of the professions holding advanced degrees or their equivalents. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the proposed employment does not qualify the Beneficiary for the requested “Schedule A” designation.

The Petitioner bears the burden of establishing eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional usually follows a three-step process. First, to permanently fill a position in the United States with a foreign worker, a prospective employer obtains certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). If DOL approves a noncitizen to permanently fill a position, an employer next submits the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS grants a petition, a designated noncitizen applies abroad for an immigrant visa or, if eligible, for adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

DOL, however, has already determined that the United States lacks professional nurses and that employment of noncitizens in these “Schedule A” positions will not harm the wages or working conditions of U.S. workers in similar jobs. 20 C.F.R. § 656.5. DOL therefore does not require employers to advertise professional nursing positions to U.S. workers in the general population and authorizes USCIS to adjudicate Schedule A labor certification applications in petition proceedings. 20 C.F.R. § 656.15(a). Thus, in this matter, USCIS rules not only on the petition, but also on its

¹ Like the Petitioner on appeal, we will hereafter refer to the offered position as “emergency nurse director.”

accompanying labor certification application. *See* 20 C.F.R. § 656.15(e) (describing USCIS' labor certification determinations under Schedule A as "conclusive and final").

II. PROFESSIONAL NURSES

A petition for an advanced degree professional must include an application for Schedule A designation or an individual labor certification from DOL. 8 C.F.R. § 204.5(k)(4)(i).² The Petitioner submitted a Schedule A application, asserting the organization's proposed employment of the Beneficiary as a professional nurse. *See* 20 C.F.R. § 656.5(a)(2) (describing Group I of Schedule A as including "[a]liens who will be employed as professional nurses").

DOL defines a "professional nurse" as:

a person who applies the art and science of nursing which reflects comprehension of principles derived from the physical, biological and behavioral sciences. Professional nursing generally includes making clinical judgments involving the observation, care and counsel of persons requiring nursing care; administering of medicines and treatments prescribed by the physician or dentist; and participation in the activities for the promotion of health and prevention of illness in others.

20 C.F.R. § 656.5(a)(3)(ii).

Before filing the petition and its accompanying Schedule A application, the Petitioner obtained a determination of the prevailing wage for the offered position of emergency nurse director. *See* 20 C.F.R. § 656.15(b)(1) (requiring employers seeking to employ Schedule A workers to comply with DOL's prevailing wage regulations at 20 C.F.R. §§ 656.40, 656.41). When noncitizens begin their sponsored employments, their labor certification employers must pay them at least the prevailing wages determined for their offered positions. 20 C.F.R. § 656.10(c)(1).

The Director found that DOL's prevailing wage determination (PWD) classifies the offered position solely under code 11-9111 ("Medical and Health Services Managers") of the U.S. government's Standard Occupational Classification (SOC) system. The Director noted the Petitioner's request on the PWD application for the position's classification under SOC code 29-1141 ("Registered Nurses"), which corresponds to different occupational titles than SOC code 11-9111. SOC code 11-9111 relates to positions such as "Health Information Managers," "Clinical Managers," and "Nursing Home Administrators." O*NET Online, "Summary Report for: 11-9111.00 Medical and Health Services Managers," <https://www.onetonline.org/link/summary/11-9111.00> (last visited Jan. 28, 2021). In contrast, the code proposed by the Petitioner, SOC code 29-1141, corresponds to positions such as "Registered Nurses," "Acute Care Nurses," "Advanced Practice Psychiatric Nurses," "Critical Care Nurses," and "Clinical Nurse Specialists." O*NET Online, "Summary Report for: 29-1141.00 Registered Nurses," <https://www.onetonline.org/link/summary/29-1141.00> (last visited Jan. 28, 2021).

² The regulation also allows "documentation to establish that the alien qualifies for one of the shortage occupations in [DOL's] Market Information Pilot Program." 8 C.F.R. § 204.5(k)(4)(i). DOL published a proposed rule for the pilot program. 58 Fed. Reg. 26077 (Apr. 30, 1993). But the agency never implemented the program. Thus, that portion of the regulation is inapplicable.

The Director's decision does not fully explain its reasoning. *See* 8 C.F.R. § 103.3(a)(1)(i) (requiring an adjudicating offer to "explain in writing the specific reasons for denial"). But the Director appears to have concluded that a Schedule A nursing position must correspond to an occupation under SOC code 29-1141 ("Registered Nurses"). In her written notice of intent to deny the petition, the Director stated that "[t]he Medical and Health Services Managers categories [under SOC code 11-9111] do not require any nursing skills." The Director's decision states:

Despite the DOL specifically determining the job opportunity was actually a Medical and Health Services Manager under SOC Code 11-9111, the petitioner still filed the Form I-140 under the Schedule A category. Even though the petitioner requires the [Beneficiary] to have a nursing degree, it does not justify the filing of the Form I-140 under the Schedule A category.

The Director thus found that the proposed employment does not qualify the Beneficiary as a professional nurse under Schedule A. Because the petition otherwise lacked an individual labor certification for the offered position, the Director denied the filing.

On appeal, the Petitioner notes that DOL's PWD classifies the offered position under *both* SOC codes 11-9111 (medical and health services managers) and 29-1141 (registered nurses). The PWD lists the SOC code of the offered position as "11-9111." But in the document's section titled "Additional Notes Regarding Wage Determination," the PWD states: "The employer's job duties represent a combination of the occupation [11-9111 - Medical and Health Services Managers] and 29-1141-Registered Nurses."³ Thus, the Petitioner argues that, contrary to the Director's findings, the PWD supports the Beneficiary's proposed employment as a professional nurse.

On part H.15 of the labor certification, however, the Petitioner indicated that the offered position does not involve a combination of job duties. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The record therefore does not establish the position's proper classification under both SOC codes 11-9111 and 29-1141.

Regardless, DOL regulations do not require a Schedule A nursing position to fall under a specific SOC code. Rather, a petitioner must demonstrate a beneficiary's proposed employment as a "professional nurse." 20 C.F.R. § 656.5(a)(2). Thus, the job duties of an offered position must correspond to the definition of the term "professional nurse" at 20 C.F.R. § 656.5(a)(3)(ii).

In determining the proposed position's eligibility for Schedule A designation, the Director improperly focused on the PWD classification of the offered position. We will therefore withdraw her decision and remand the matter. On remand, the Director should examine the position's proposed job duties to determine whether the Beneficiary would work as a "professional nurse" as defined at 20 C.F.R. § 656.5(a)(3)(ii). If the Director finds that the position's job duties do not sufficiently correspond to

³ If a job opportunity has requirements described in a combination of occupations, DOL "default[s] directly to the relevant O*NET-SOC occupational code for the highest paying occupation." DOL, Employment & Training Admin., *Prevailing Wage Determination Policy Guidance*, 4 (revised Nov. 2009), https://www.fldatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf (last visited Feb. 1, 2021).

those of a “professional nurse,” she should explain the deficiency to the Petitioner and request any additional evidence needed.

If supported by the record, the Director may also notify the Petitioner of any additional, potential grounds of denial. The Director must provide the Petitioner with a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

III. CONCLUSION

The Director erred in determining the qualifications of the Petitioner’s proposed employment for Schedule A designation. The Director must examine the offered position’s job duties to determine whether the Beneficiary would work as a “professional nurse.”

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.