



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

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

In Re: 8609236

Date: MAR. 18, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a provider of healthcare staff, seeks to employ the Beneficiary as a nurse supervisor. The company requests her classification under the second-preference, immigrant visa category for members of the professions holding advanced degrees. *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 and dismissed the Petitioner's following motion to reopen. The Director concluded that the Petitioner did not establish the eligibility of the offered position for the requested Schedule A designation or immigrant visa category. The Director also found insufficient evidence of the company's required ability to pay the combined proffered wages of this and other immigrant visa petitions.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also* *Matter of Chawathe*, 25 I&N Dec. 169, 175 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

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 must obtain 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 position, an employer must next submit 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 may apply 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 sufficient 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 positions. 20 C.F.R. § 656.5. Thus, DOL authorizes USCIS to adjudicate Schedule A labor certification applications for nurses in immigrant visa petition

proceedings. 20 C.F.R. § 656.15(a). Therefore, in this matter, USCIS rules not only on the immigrant visa petition, but also on its accompanying labor certification application. *See* 20 C.F.R. § 656.15(e) (describing the labor certification determinations of USCIS in Schedule A proceedings as “conclusive and final”).

II. SCHEDULE A DESIGNATION AS A “PROFESSIONAL NURSE”

Schedule A designation is potentially available to noncitizens “who will be employed as professional nurses.” 20 C.F.R. § 656.5(a)(2). The term “professional nurse” means:

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. A program of study for professional nurses generally includes theory and practice in clinical areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine.

20 C.F.R. § 656.5(a)(3)(ii).¹

The petition and accompanying labor certification application indicate the Petitioner’s intent to employ the Beneficiary in the offered position of nurse supervisor at the site of a client hospital in Utah. On the labor certification application, the Petitioner stated that, as nurse supervisor, the Beneficiary would oversee registered nurses, licensed practical nurses, and certified nursing assistants in providing care to patients. She would establish subordinates’ work schedules, ensure the application of proper nursing procedures, and demonstrate use of medical equipment to newly hired nurses. The Petitioner also stated that the Beneficiary would help the nursing team plan, evaluate, and execute care, oversee emergency nursing procedures as needed, and “from time to time” assume the duties of absent nurses. The Petitioner documented the Beneficiary’s possession of a bachelor of science degree in nursing from the Philippines, a U.S. master of science degree in healthcare administration, and a U.S. state license as a registered nurse.

The Petitioner also submitted a copy of DOL’s prevailing wage determination (PWD) for the offered position. Schedule A applications must include PWDs for offered positions in their geographical areas of intended employment. 20 C.F.R. § 656.15(b)(1). As the Director noted, the Petitioner’s description of the offered position on the business’s PWD request differs from the job duties the business listed on the labor certification application. Like the job description on the application, the PWD request states the Beneficiary’s proposed supervision of registered nurses, licensed practical nurses, and certified nursing assistants in providing patient care. But the PWD request omits the other duties listed on the application. Instead, the PWD states that the Beneficiary would: administer prescribed

¹ Unlike the Act and Department of Homeland Security regulations, DOL’s rules for Schedule A applications do not use the term “professional” to describe a position requiring a baccalaureate degree. *See* section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32); 8 C.F.R. § 204.5(k)(2) (defining the term “profession” to include architects, engineers, lawyers, physicians, surgeons, certain teachers, and any other occupations that require a bachelor’s degree for entry). Thus, DOL regulations do not require “professional nurses” to have bachelor’s degrees.

medications and treatments; prepare equipment and assist doctors during treatments and examinations of patients; observe patients and record significant conditions and reactions; notify supervisors or doctors of patient conditions, reactions, and incidents; and take patients' temperatures, blood pressures, and vital signs. Thus, the duties on the labor certification application mostly include supervisory and administrative tasks, while the job description on the PWD primarily reflects clinical nursing duties.

Because the Petitioner inconsistently described the Beneficiary's proposed duties, the Director's request for additional evidence (RFE) asks the company to detail the duties of the job and the positions that the Beneficiary would supervise. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Noting that the Petitioner's RFE response omitted the requested information, the Director found the record insufficient to demonstrate the Beneficiary's proposed employment as a professional nurse and the position's eligibility for Schedule A designation.

USCIS may deny a benefit request if a petitioner omits requested evidence "which precludes a material line of inquiry." 8 C.F.R. § 103.2(b)(14). The Petitioner did not provide information requested by the Director to resolve discrepancies regarding the nature of the proposed employment. The requested information and materials matter because, by regulation, a Schedule A beneficiary must work as a "professional nurse." *See* 20 C.F.R. § 656.5(a)(2). A professional nurse generally performs clinical duties, such as: "making clinical judgments;" "administering medicines and treatments;" and participating in activities promoting health and illness prevention. 20 C.F.R. § 656.5(a)(3)(ii). The Petitioner provided conflicting job descriptions of the offered position. While the description on the PWD emphasizes clinical duties, the job duties on the labor certification application stress supervisory and administrative tasks. The Petitioner has not demonstrated the general, clinical nature of the offered position's job duties and thus the Beneficiary's proposed employment as a "professional nurse." The evidence requested by the Director was therefore material.

On appeal, the Petitioner cites a USCIS memorandum and a regulation in Utah, the Beneficiary's proposed state of employment. Consistent with these materials, the business argues that "professional nursing" encompasses the performance of supervisory *and* administrative duties. The USCIS memo states that Schedule A petitioners must post separate notices of filing for each job classification included in a petition, using the position of "supervisory nurse" as an example.² Memorandum from Michael Aytes, Acting Assoc. Dir., Domestic Ops., USCIS, HQPRD70/2312, *AFM [Adjudicator's Field Manual] Update: Chapter 22: Employment-based Petitions (AD03-01)* 16 (Sep. 12, 2006), [https://www.uscis.gov/sites/default/files/document/memos/afm_ch22_091206r .pdf](https://www.uscis.gov/sites/default/files/document/memos/afm_ch22_091206r.pdf). The memo states that "separate notices would be posted for an attending nurse and a supervisory nurse (*i.e.*, nurses having different job duties and wage rates)." *Id.* The Petitioner argues that the memo's reference to the supervisory nursing position demonstrates the qualifications of the offered position of nurse supervisor for Schedule A designation. The Utah regulation lists expected duties of "registered nurses" to include "demonstrat[ing] the ability to responsibly organize, manage, and supervise the practice of nursing by: delegating tasks in accordance with these rules and applicable statutes." Utah

² DOL incorporated the notice-of-filing requirements for individual labor certifications at 20 C.F.R. § 656.10(d) into the Schedule A regulations. *See* 20 C.F.R. § 656.15(b)(2).

Admin. Code Rs.156-31b-703b(l), (n). The Utah regulation also states that registered nurses may include “chief administrative nurses.” *Id.*

The USCIS memo cited by the Petitioner suggests that a supervisory nurse may qualify for Schedule A classification. The memo, however, does not state or suggest that *all* supervisory nurses qualify for Schedule A designation. Rather, consistent with DOL regulations, a Schedule A nursing position must require a “professional nurse.” *See* 20 C.F.R. § 656.5(a)(2), (3)(ii). USCIS must therefore examine the job duties of supervisory nursing positions on a case-by-case basis to determine whether the duties demonstrate the jobs’ needs for “professional nurses.” As previously discussed, the Petitioner has not resolved its inconsistent descriptions of the offered position’s duties, precluding us from determining the actual duties of the position and whether it would qualify for Schedule A designation. The USCIS memo’s reference to a supervisory nurse therefore does not establish the offered position’s qualifications for Schedule A designation.

The Utah regulation cited by the Petitioner does not relate to the offered position’s eligibility for Schedule A designation. As discussed above, for U.S. immigration purposes, Schedule A classification requires a beneficiary’s proposed employment as a “professional nurse” as defined at 20 C.F.R. § 656.5(a)(3)(ii). The description of “registered nurses” in a state of intended employment does not control Schedule A eligibility. Thus, the Utah regulation does not demonstrate the position’s qualifications for Schedule A designation.

The Petitioner further argues that the PWD designates the offered job as a “registered nursing” position because DOL classifies supervisory positions and their subordinate jobs under the same occupational code. *See* U.S. Bureau of Labor Statistics, 2010 SOC User Guide, Classification Principles and Coding Guidelines 2 (Jan. 2010), https://www.bls.gov/soc/soc_2010_class_prin_cod_guide.pdf.

As previously discussed, however, the job duties of an offered position determine its eligibility for Schedule A classification. The Petitioner’s PWD lists job duties different from those stated on the labor certification application. Therefore, without resolution of the position’s duties, we cannot rely on the PWD classification. The Petitioner’s argument is therefore unavailing.

The Petitioner neither resolved its inconsistent descriptions of the offered position’s job duties, nor provided requested, material evidence regarding the position’s nature. Thus, contrary to the requirements for Schedule A classification, the record does not establish the Beneficiary’s proposed employment as a professional nurse. We will therefore affirm the petition’s denial.

The Director also found that the offered position does not qualify for the requested immigrant visa category and that the Petitioner did not demonstrate its ability to pay the position’s proffered wage. Because we will affirm the petition’s denial based on the requested Schedule A designation, we need not review the other denial grounds and hereby reserve decisions on them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (holding that “agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

III. CONCLUSION

The Petitioner has not demonstrated the offered position's eligibility for the requested Schedule A designation. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.