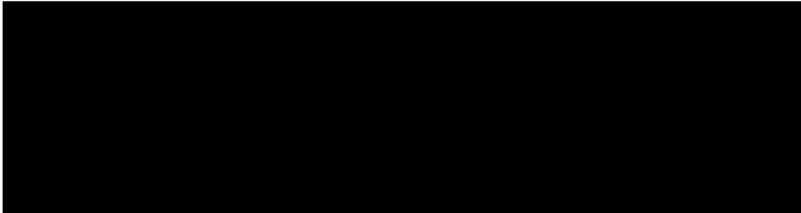




U.S. Citizenship
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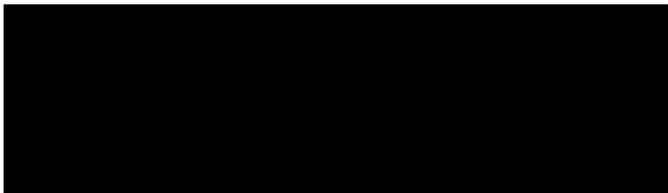
FEB 06 2007

File: WAC-05-013-50538 Office: CALIFORNIA SERVICE CENTER Date:

In re: Petitioner: [Redacted]
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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a medical facility. The petitioner seeks to employ the beneficiary permanently in the United States as a registered nurse, a professional worker, pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).

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, not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner has applied for the beneficiary under a blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. 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.

Based on 8 C.F.R. § 204.5(a)(2) an applicant for a Schedule A position would file Form I-140, “accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien’s occupation qualifies as a shortage occupation within the Department of Labor’s Labor Market Information Pilot Program.” The priority date of any petition filed for classification under section 203(b) of the Act “shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [Citizenship and Immigration Services (CIS)].” 8 C.F.R. § 204.5(d).

Pursuant to the regulations set forth in Title 20 of the Code of Federal Regulations, the filing must include evidence of prearranged employment for the alien beneficiary. The employment is evidenced by the employer’s completion of the job offer description on the application form and evidence that the employer has provided appropriate notice of filing the Application for Alien Employment Certification to the bargaining representative or to the employer’s employees as set forth in 20 C.F.R. § 656.20(g)(3). 20 C.F.R. § 656.22(a) and (b). Also, according to 20 C.F.R. § 656.10, aliens who will be permanently employed as professional nurses must have (1) passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination, or (2) hold a full and unrestricted license to practice professional nursing in the [s]tate of intended employment.

Additionally, the petitioner must demonstrate its ability to pay the proffered wage. The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the case at hand, the petitioner submitted the Application for Alien Employment Certification, ETA-750, with the I-140 Immigrant Petition on October 19, 2004, which is the priority date. The proffered wage as stated on Form ETA 750A for the position of a registered nurse is an annual salary of \$62,108.00 based on 40

hours per week, with a listed overtime rate of the hourly rate and one-half per hour. On the I-140 petition filed, the petitioner listed the following information related to the petitioning entity: established: 1997; gross annual income: \$578 Million; net annual income: not listed; and current number of employees: 4,900.

The director issued a Request for Additional Evidence (“RFE”) on April 18, 2005, requesting that the petitioner submit evidence that the beneficiary will fill a specific vacancy; that the petitioner submit evidence of the beneficiary’s prior experience to verify the beneficiary’s prior job duties and number of hours worked; that the petitioner submit evidence of its ability to pay, of either a federal tax return, audited financial statement, or annual report, and evidence in the form of a financial officer’s statement; and for the petitioner to submit a duplicate Part B of Form ETA 750 as a Schedule A filing requires that the petitioner submit both parts of the ETA 750 in duplicate. The petitioner responded to the RFE and supplied the requested information, including a second Form ETA 750B as requested. On August 3, 2005, the director denied the petition as the petitioner failed to file the ETA 750A&B in original duplicate. The petitioner submitted a second Form ETA 750B in response to the RFE, which was different than the initial form submitted.

The AAO takes a *de novo* look at issues raised in the denial of this petition. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal¹.

The record shows that the appeal is properly filed, timely and makes an allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

For a Schedule A petition, the petitioner is required to file: Form I-140; an uncertified duplicate Form ETA 750A and 750B, signed in the original by an authorized official of the petitioning entity and by the alien; a copy of the posting notice; and evidence of the alien’s qualifications. See 20 C.F.R. § 656.22.

On appeal, counsel contends that the director should have notified the petitioner that the filing was lacking a second ETA 750A, and that the RFE only referenced a request to send a second ETA 750B. We note that counsel has misread the director’s decision, and that the ETA 750A is not in issue. The record of proceeding does contain two original ETA 750A Forms. The error raised in the decision is that the petitioner submitted two ETA 750B forms, which are not identical. The two Forms ETA 750B do reflect some minor differences, one form is handwritten, and the other is typed. However, the pertinent information and dates listed for the beneficiary’s prior employment and education do match. The differences between the descriptions are slight; the differences do not impact eligibility, or present any substantive issues.² Therefore, we find that the petition is approvable.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² The handwritten ETA 750B, completed by the beneficiary, lists more specific information for the beneficiary’s three positions, such as for one position, “worked as a staff nurse in a 50 bed capacity. Carries out doctors order [sic] and assisted doctors in all medical procedures. Prepares patients for diagnostic/surgical procedures, gives health teaching [sic] and relatives as necessary [sic]. Monitors, assess, and evaluation, implementation of med. care [sic].” The typed ETA 750B was completed with a more general description for the position, but essentially provides the same: “provide prescribed medical treatment and personal care services to the ill and injured. Take and record patients’ vital signs. Administer specified medication orally or by injection. Collaborate with physicians, health care and the patients’ family.” It would

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition will be approved.

appear that counsel summarized the beneficiary's work experience to provide a more concise and condensed version. The other two experience blocks on the ETA 750B follow the same format in that the beneficiary's more specific descriptions were summarized more generally but concisely, and remain the same in substance. The beneficiary properly signed the typed ETA 750B, which, again, substantively contains the same information as the beneficiary's handwritten version.