



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

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

In Re: 26274825

Date: MAY 10, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a healthcare service provider, seeks to employ the Beneficiary as a registered nurse under Schedule A. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary is qualified for the position. Specifically, the Director found that Department of Labor (DOL) guidance precludes consideration of experience gained under a petitioning employer if the experience is in a position substantially comparable to the position sought. *See* 20 C.F.R. § 656.17. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

The DOL has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available for certain occupations designated under Schedule A, which in relevant part includes workers who will be employed as professional nurses who hold a permanent, full, and unrestricted license to practice professional nursing in the state of intended employment. *See* 20 C.F.R. § 656.5(a)(2)(ii). An employer seeking labor certification for a Schedule A occupation must apply under 20 C.F.R. §§ 656.10 and 656.15. 20 C.F.R. § 656.10(a)(3). Petitions for Schedule A occupations do not require a petitioner to test the labor market and obtain a certified labor certification from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified labor certification. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15.¹ Specifically, “[a]pplication for certification of employment as a professional

¹ The priority date of the petition is August 15, 2022, the date the completed, signed petition was properly filed with USCIS. *See* 8 C.F.R. § 204.5(d).

nurse may be made only under § 656.15(c) and not under § 656.17.” 20 C.F.R. § 656.15(c)(2).² Therefore, the Director’s application of the regulation at 20 C.F.R. § 656.17 is misplaced in this case.

The record establishes that the State of Georgia Board of Nursing issued the Beneficiary a “Registered Prof Nurse” license in 2018 and it remains active. The record further establishes that [redacted] University awarded the Beneficiary a bachelor of science in nursing degree, which satisfies the requirement provided on the labor certification that the Beneficiary has at least an associate’s degree in nursing. Additionally, the Beneficiary’s nursing experience working for the Petitioner satisfies the labor certification requirement of at least one year of nursing experience within the prior five years, and the record contains a BLS certification for the Beneficiary, as required by the labor certification.

The record, considered in its entirety under the preponderance of evidence standard, establishes that the Beneficiary is qualified for the position sought. We withdraw the Director’s conclusion to the contrary.

ORDER: The appeal is sustained.

² Labor certifications for professional nurses “shall not be considered” under 20 C.F.R. § 656.17. 20 C.F.R. § 656.15(f).