MATTER OF GUTIERREZ

In Visa Petition Proceedings

A-17653997

Decided by District Director July 5, 1967

Since a nurse is a member of the professions within the meaning of section 101(a)(32) of the Immigration and Nationality Act, as amended, if she has been awarded a diploma or certificate signifying successful completion of a program for professional nurses conducted by an accredited hospital or independent school or has attained an associate or baccalaureate degree in nursing in a junior college, college or university, a visa petition is granted to accord preference classification under section 203(a)(3) of the Act, as a professional nurse, to beneficiary who received a diploma upon the successful completion of a 3-year course of study at an accredited school of nursing in the Philippines.

The petition was filed by the beneficiary for third preference classification as a member of the professions based upon her qualifications as a professional nurse.

She is married, a native and citizen of the Philippines, presently residing with her family in the Philippines. She attended the University of the Philippines School of Nursing from 1954 to 1957, graduating with a diploma in nursing. She was licensed as a registered nurse by the Board of Examiners for Nurses, Republic of the Philippines, in September 1957. She has been employed in various nursing capacities in the Philippines from 1957 to date.

Section 203(a)(3) of the Act, as amended, relates to issuance of immigrant visas "to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States." The term "profession" is defined in section 101(a)(32) of the Act as including but not being limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary schools, colleges, academies, or seminaries.

The Occupational Outlook Handbook, 1966–1967 edition, published by the Bureau of Labor Statistics, United States Department of

Labor contains on pages 122 through 125 a discussion of the employment of "Registered Professional Nurses". In discussing the training and qualifications for this work, the Handbook includes the following statement:

> Three types of educational programs—diploma, baccalaureate degree and associate degree—offer the basic education required for careers in *professional* nursing. Diploma programs are conducted by hospital and independent schools and usually require three years of training; bachelor's degree programs usually require four years of study in a college or university, although a few require five years; associate degree programs in junior colleges require approximately two years of nursing education. (Emphasis added.)

By way of contrast to the *professional* nurse, the Handbook in discussing the employment of "Licensed Practical Nurses" indicates, at page 98, that while high school graduation is required by some states in this country as a prerequisite to enrollment in state-approved training programs for *practical* nurses, in other states candidates with only eighth or ninth grade educations can enroll. The approved training courses are largely public school courses offered as part of vocational and adult education programs, while some are given at junior colleges, local hospitals, health agencies and private educational institutions, and are usually of one year's duration. The Handbook makes the following comment concerning the education and training of *practical* nurses as compared with that of *professional* nurses:

> *Practical* nurses cannot advance to positions as registered *professional* nurses, however, unless they undertake the years of additional schooling which are required in order for them to qualify for such work. (Emphasis added.)

Chapter 4723 of the Ohio Revised Code contains the requirements and recommendations for nursing, and for schools of nursing in that State. It provides that an applicant for the examination for registration as a nurse must be graduated from an approved school of nursing. There is no requirement that such applicant must possess a baccalaureate in nursing.

The American Nurses' Association, established 1898, represents licensed professional nurses, and is recognized by all State Boards of Nursing, as an authoritative qualifying body for this field. An information booklet of that Association on Examination for State Licensure to Practice Nursing, states on page 4:

> Since the purpose of the written examination is to determine minimum competency for safe practice, the same examination is used for all graduates, although preparation may vary in diploma, associate degree, and baccalaureate programs.

Ordinarily, recognition of status as a member of the professions is attained through completion of high education, generally at the

baccalaureate level or higher, by virtue of which the individual becomes qualified to enter a particular field of endeavor. However, registered nurses have traditionally been regarded as professional persons. Authoritative sources such as various state licensing authorities and the American Nurses' Association which are interested in maintaining high standards for practicing this profession, require a specified amount of education and training, not necessarily including a baccalaureate degree, for recognition as a professional nurse. As cited from the Occupational Outlook Handbook, *supra*, the Department of Labor has described the qualifications for entry into the profession of nursing. On the basis of these considerations it is concluded that a nurse may be considered as a member of the professions if she has been awarded a diploma or certificate signifying successful completion of a program for professional nurses conducted by an accredited hospital or independent school, or has attained a baccalaureate degree or an associate degree in nursing, as described in the Occupational Outlook Handbook.

Section 203(a)(8) of the Immigration and Nationality Act, as amended, provides that third preference aliens, *inter alia*, must obtain a certification by the Secretary of Labor, pursuant to section 212(a)(14) of that Act, to the effect that qualified workers in the United States are unavailable and that the aliens' employment would not have an adverse effect on wages and working conditions of workers similiarly employed in this country. Under 8 CFR 204.2(f) the Secretary of Labor's determination with respect to the issuance of the required certification is obtained before any third preference petition may be approved. The required certification has been issued in the instant case.

The evidence in this case establishes that the beneficiary received a diploma upon the successful completion of a three-year course of study at an accredited school of nursing in the Philippines. Under the criteria discussed above she is regarded as a professional nurse.

Since she is qualified as a nurse for classification as a member of the professions and the required labor certification has been issued, she is entitled to preference status under section 203(a)(3) of the Immigration and Nationality Act.

ORDER: It is ordered that the petition to accord the beneficiary third preference classification be and hereby is approved.