

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: JUL 03 2014

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a software development, reselling, and consulting company. It seeks to permanently employ the beneficiary in the United States as a senior software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an Application for Permanent Employment Certification, ETA Form 9089 (labor certification), that was certified by the U. S. Department of Labor (DOL).

The Director denied the petition on November 19, 2013, finding that the petitioner failed to establish that the beneficiary had five years of progressive post-baccalaureate experience in the specialty, as required for the beneficiary to qualify for classification as an advanced degree professional based on his four-year bachelor of engineering degree from a foreign university and subsequent work experience.

The petitioner filed a timely appeal with supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In this connection we issued a Request for Evidence (RFE) on April 8, 2014, which alluded to the experience requirement and requested the petitioner to submit additional evidence of its ability to pay the proffered wage. The petitioner responded to the RFE with a brief from counsel and additional documentation on May 6, 2014.

Section 203(b)(2) of the Act provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage of the job offered from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is September 4, 2012, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Based on the entire record, including the evidence submitted on appeal, the AAO finds that the petitioner has established that the beneficiary more likely than not had all the education, training, and experience specified on the ETA Form 9089 as of the priority date. Therefore, the petitioner has overcome the grounds for denial in the Director's decision. The AAO also determines, based on the entire record, that the petitioner has established its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. Accordingly, the petition is approved under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the beneficiary as an advanced degree professional.

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The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

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