



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 26 2014 OFFICE: TEXAS SERVICE CENTER

IN RE:

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 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. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center (Director). Upon further review, the director issued a Notice of Intent to Revoke (NOIR) and subsequently revoked the petition's approval. The director also dismissed the petitioner's motion to reopen and reconsider. It is now on appeal before the Administrative Appeals Office (AAO). The case will be remanded to the director for further review and entry of a new decision.

The petitioner is a software development company. It seeks to permanently employ the beneficiary in the United States as a 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, certified by the United States Department of Labor (DOL).

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.¹ The priority date of the instant petition is June 27, 2006, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director initially approved the petition. Upon further review and investigation, the director issued a Notice of Intent to Revoke on March 9, 2012. Upon receipt of the petitioner's response, the director determined that it did not overcome the grounds for revocation and revoked the petition's approval on May 16, 2012. The director additionally dismissed the petitioner's motion to reopen and reconsider on November 8, 2012.² The director's decision concludes that the petitioner's job offer was not *bona fide* as described by the terms of the labor certification as the beneficiary has never resided in the geographic location of employment. The petitioner claims that the beneficiary was employed at temporary locations in other places other than its Cincinnati, Ohio office.³

Following a review of the record, the AAO has determined that the director has not sufficiently articulated the basis for his decision that the petitioner failed to establish that it intended to permanently employ the beneficiary as described in the labor certification. *See* 103.3(a)(1)(i). The record also raises a question whether the petitioner established that the beneficiary possesses a foreign degree equivalent to a U.S. Master's degree in Computer Science or Engineering. For these reasons the case will be remanded to the director to determine whether the petitioner

¹ 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 to the beneficiary from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2).

² The decision indicates that it was remailed on December 14, 2012.

³ The record indicates that the petitioner's main office is now in Dayton, Ohio.

established that it would be the beneficiary's actual employer,⁴ whether the beneficiary possesses the educational credentials required by the labor certification, and any other issue considered relevant. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

In view of the foregoing, the director's decision will be withdrawn. The petition is remanded to the director as set forth above.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.

⁴ See 8 C.F.R. § 204.5(c) and 20 C.F.R. § 656.3.