

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **AUG 29 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on May 22, 2013, the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reopen and reconsider the AAO's decision. The motion will be granted and the decision of the AAO will be withdrawn. The petitioner's appeal to the AAO will be held in abeyance.

The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation.

On February 2, 2012, the Department of Labor (DOL) revoked the certification of ETA Form 9089 (C-06057-90512). This is the labor certification which supports the instant Form I-140. The AAO dismissed the appeal because the labor certification was revoked, and the instant petition was not accompanied by an approved labor certification as required by 8 C.F.R. § 205.1(a)(iii)(A). However, the record now indicates that the petitioner appealed the DOL's decision to revoke the labor certification to the Board of Alien Labor Certification Appeals (BALCA). The BALCA review is currently pending. As such, the AAO will hold the decision on the petitioner's appeal [REDACTED] in abeyance until BALCA makes a decision on the validity of the ETA Form 9089 (C-06057-90512).

An alien seeking to be classified as an employment-based third preference immigrant under section 203(b)(3) of the Act is inadmissible unless the Secretary of Labor has determined and certified that there are not sufficient workers who are able, willing, qualified and available for the employer's job opportunity, and that the alien's admission to the United States will not adversely affect the wages and working conditions of U.S. workers similarly situated. *See* sections 212(a)(5)(A)(i)(I) and (II) of the Act. Accordingly, every petition filed to classify an alien beneficiary as an employment-based immigrant under section 203(b)(3)(A) of the Act must be accompanied by an individual labor certification issued by DOL. *See* 8 C.F.R. § 204.5(l)(3)(i). Without an appropriate certification from DOL, the AAO is without statutory authority to adjudicate or grant a petitioner's employment-based third preference immigrant petition.

Accordingly, the instant administrative proceedings before the AAO are hereby held in abeyance pending resolution of the DOL's review of the labor certification revocation. Upon conclusion of the administrative proceedings before BALCA in connection with the revoked Form ETA 9089, the AAO will continue adjudication of the Form I-140 in the instant case and issue an appropriate decision at that time. This abeyance will be conditioned upon the petitioner providing written notice to the AAO advising of the status of its appeal to BALCA every 90 days or until BALCA renders a decision. If the petitioner fails to comply with this condition, the AAO will render a final decision on the instant appeal based on the DOL's decision revoking the labor certification of the Form ETA 9089 (C-06057-90512).

ORDER: The motion is granted and the AAO decision will be withdrawn. The petitioner's appeal [REDACTED] will be held in abeyance.