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

(b)(6)

DATE: JAN 2 4 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based, preference visa petition. The petitioner is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner states that it is a California corporation that engages in the recycling business. It seeks to employ the beneficiary permanently in the United States as a materials engineer at the proffered wage of $29.16 an hour.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional worker.[1] The director determined that the petitioner had failed to submit the required initial evidence with its petition, thus failing to demonstrate a continuing ability to pay the beneficiary the proffered wage and to show that the beneficiary is qualified for the offered position. The director denied the petition accordingly.

On appeal, the petitioner asserts that the director denied the petition for failure to submit the approved labor certification. The petitioner states that it included the approved labor certification in its petition. It provided a copy of the approved labor certification with its appeal.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

The record shows that the petitioner is factually correct: it submitted the original, approved labor certification in its petition. Unfortunately, however, the petitioner and the beneficiary did not sign the approved labor certification, as the regulation at 20 C.F.R. § 656.17(a)(1) requires. Nor did the petitioner submit other required initial evidence with the petition, including evidence of its ability to pay the beneficiary's offered wage and the beneficiary's educational qualifications for the offered position.[3]

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[1] Engineers are statutorily recognized as members of a "profession." *See* section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32).

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] The regulation at 8 C.F.R. § 204.5(g)(2) requires a petitioner to submit annual reports, federal tax returns, or audited financial statements to demonstrate its ability to pay the offered wage. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires a petitioner to submit evidence of the beneficiary's educational qualifications for the offered position as listed on the approved labor certification.

The director properly denied the petition pursuant to 8 C.F.R. § 103.2(b)(8)(iii). This regulation allows the director to deny a petition that does not include "all required initial evidence" without first requesting the missing evidence from the petitioner.

As the director noted in his decision, the petitioner may submit a new petition for the offered position on behalf of the beneficiary.[4] A new petition would require a new, signed Form I-140 with the appropriate processing fee. *See* 8 C.F.R. § 103.7. Both the beneficiary and the petitioner must also sign the original, approved labor certification where indicated on pages 8 and 9, respectively, of the ETA Form 9089. *See* 20 C.F.R. § 656.17(a)(1).

In addition, in a new petition, the petitioner must include evidence that the beneficiary meets the educational qualifications for the position as listed on the approved labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). The offered position requires a U.S. bachelor's degree or the foreign equivalent in materials engineering. The petitioner therefore should include a copy of the beneficiary's bachelor's degree or other official college or university record of the foreign degree, along with a written determination from an expert that the beneficiary's degree equals at least a U.S. bachelor's degree in materials engineering.

With a new petition, the petitioner must also include evidence that it has had the continuous ability to pay the beneficiary's offered wage since it filed the labor certification on June 11, 2009. *See* 8 C.F.R. § 204.5(g)(2). This evidence must include copies of the petitioner's annual reports, federal tax returns, or audited financial statements for each year since 2009.

Because the petitioner failed to submit the required initial evidence with its petition, the director properly denied the petition pursuant to 8 C.F.R. § 103.2(b)(8)(iii).

ORDER: The appeal is dismissed.

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[4] The record shows that the 180-day validity period of the petitioner's approved labor certification expired on August 24, 2010. *See* 20 C.F.R. § 656.30(b)(1). But USCIS continues to accept amended or duplicate I-140 petitions containing expired labor certifications where "the original labor certification was submitted in support of a previously filed petition during the labor certification's validity period." *See USCIS, Adjudicator's Field Manual*, § 22.2(F)(i) (2011)(exception to expired labor certification where "[t]he petitioning employer wishes to file a new petition subsequent to the denial … of the previously filed petition, and the labor certification was not invalidated due to material misrepresentation or fraud relating to the labor certification application.") The petitioner filed its petition with the original approved labor certification on June 1, 2010, according to the record, within the 180-day validity period of the labor certification.