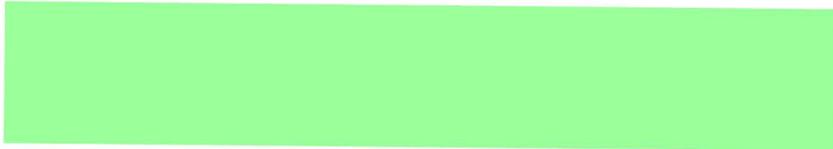


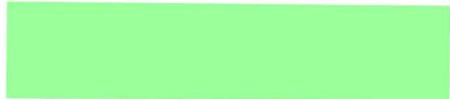


U.S. Citizenship
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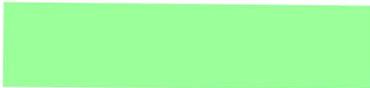
DATE: JUN 24 2013 OFFICE: TEXAS SERVICE CENTER



IN RE:

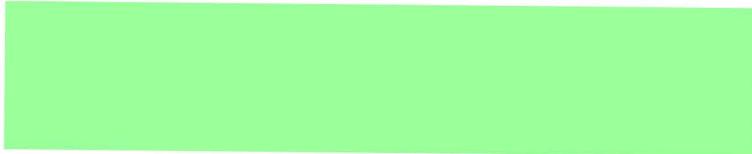
Petitioner:

Beneficiary:



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 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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner describes itself as a data storage design, development and manufacturing business. It seeks to permanently employ the beneficiary in the United States as a worldwide cost of sales (COS) analyst. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is February 19, 2004, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The director denied the petition on January 25, 2010 and the petitioner appealed the decision to the AAO. On April 2, 2013, the AAO issued a request for evidence (RFE) informing the petitioner that the record did not establish the petitioner's continuing ability to pay the beneficiary the proffered wage from the priority date in 2004 onward. The petitioner's response has been incorporated into the record.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Upon review of the entire record, including evidence submitted on appeal and in response to the RFE, the AAO concludes that the petitioner has established that the beneficiary possessed the required education for the proffered position, as set forth on the labor certification, and for classification as a skilled worker. However, the beneficiary does not possess the single-source U.S. bachelor's degree or foreign equivalent degree required by 8 U.S.C. § 1153(b)(3)(A)(ii) for classification as a professional. The AAO also finds that the petitioner has established that the beneficiary possesses the required experience as stated on the labor certification. Further, the AAO is persuaded that it is more likely than not that the petitioner had the continuing ability to pay the beneficiary the proffered wage from the priority date in 2004 to the present.

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

ORDER: The appeal is sustained, and the petition is approved.