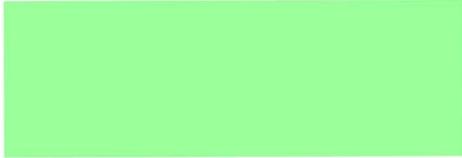


(b)(6)

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: **NOV 22 2013**

OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary: 

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

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. 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.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent motion. The matter is now before the AAO on the petitioner's motion to reopen.¹ The motion will be approved. The decisions of the AAO and the director will be withdrawn. The matter will be remanded for further review and entry of a new decision.

The petitioner is a manufacturer of floor care products. It seeks to permanently employ the beneficiary in the United States as a Computer Software Engineer. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner requested classification of the beneficiary as a skilled worker pursuant to 203(b)(3)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(i). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).

The Form I-140² was initially filed on March 28, 2011, accompanied by an ETA Form 9089, which established a priority date of June 20, 2008. On June 21, 2012, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary had the work experience required by the terms of the labor certification as of the priority date. The petitioner, through counsel filed an appeal. On September 26, 2013, the AAO dismissed the appeal, concurring with the director's decision to deny the petition. The petitioner has filed a motion to reopen. As the petitioner has submitted new evidence relating to the initial basis for the denial, the AAO will approve the motion and remand the case to the director for consideration of the evidence submitted to the record.

The previous decisions of the AAO and the director will be withdrawn. The petition is remanded to the director for consideration of the petitioner's evidence submitted to the record. 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.

ORDER: The previous decisions of the AAO, dated September 26, 2013 and the director's decision, dated June 21, 2012 are withdrawn. The case is remanded to the director for further review and entry of a new decision.

¹ The petitioner's filing was incorrectly styled as an appeal, but will be treated as a motion in this case.

² The petitioner filed a previous Form I-140 on March 22, 2006 on behalf of the beneficiary. It was denied on February 8, 2008 and an appeal was subsequently dismissed on November 17, 2010.