

(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: **MAY 12 2014** OFFICE: NEBRASKA 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:
[REDACTED]

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.

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 (director) denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen and a motion to reconsider. The AAO granted the motions, but affirmed our prior decisions. We now reopen the matter *sua sponte* pursuant to 8 C.F.R. § 103.5(a)(5)(i) for further consideration. The appeal will be sustained. The AAO's prior decisions will be withdrawn. The petition will be approved.

The petitioner is a public accounting firm specializing in litigation. It seeks to employ the beneficiary permanently in the United States as an accountant (Litigation Staff Accountant) pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). 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 director determined that the petitioner had failed to demonstrate that the beneficiary met the educational requirements set forth in the labor certification. On appeal and in its decision on motion, the AAO reached a similar conclusion.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are capable 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) also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 priority date of the petition is December 18, 2006, the date on which DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d). The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on April 16, 2007, with a priority date of December 18, 2006.

Upon review of the record, we find the beneficiary to have met the requirements of the labor certification as of the priority date. Accordingly, the AAO withdraws its prior decisions of September 28, 2009 and February 18, 2010, and approves the visa petition.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The prior decisions of the AAO are withdrawn. The appeal will be sustained. The petition is approved.