

(b)(6)

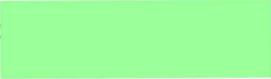
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



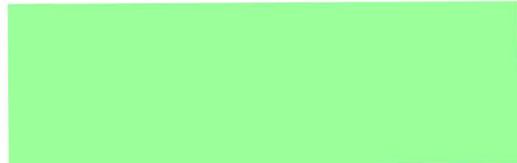
DATE: JUL 16 2013 OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



SERVICE MOTION TO REOPEN

INSTRUCTIONS:

The Director, Texas Service Center (director), denied the immigrant petition on February 17, 2009. The petitioner appealed the decision to the Administrative Appeals Office (AAO) and the appeal was subsequently dismissed. The petitioner then filed a second Form I-290B, checking box A, indicating that it was filing an appeal of the AAO's decision. As the AAO does not exercise appellate jurisdiction over its own decisions, the second appeal was rejected.

The AAO's decision dated February 12, 2013, rejecting the appeal will be withdrawn. Upon review, we find that the petitioner intended to file a motion to reopen and that box A on Form I-290B, indicating that an appeal was being filed, was checked in error.

Therefore, the AAO is reopening this matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of correcting its error and entering a new decision. The petition will be approved.

The petitioner describes itself as a physical medicine and rehabilitation business. It seeks to permanently employ the beneficiary in the United States as an acupuncturist. The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2) as a member of the professions holding an advanced degree. The petition is accompanied by an ETA Form 9089 Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is December 26, 2006, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date.

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)(2) of the Act, 8 U.S.C. § 1153(b)(2) provides for the granting of preference classification to qualified immigrants who hold an advanced degree. 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 petitioner must also to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

Upon review of the entire record, including evidence submitted on appeal and motion, 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 onward. Additionally, the AAO finds that the evidence submitted establishes that the beneficiary had all the education, training, and experience specified on the ETA 9089, as of the priority date. Accordingly, the petition is approved under section 203(b)(2) or the Act, 8 U.S.C. § 1153(b)(2).

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. The petition is approved.



Ron Rosenberg  
Acting Chief, Administrative Appeals Office