



U.S. Citizenship
and Immigration
Services

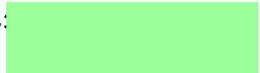
(b)(6)



DATE: AUG 13 2014

OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE:

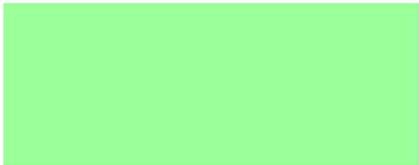
Petitioner:



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:



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

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a private [REDACTED] high school. It seeks to permanently employ the beneficiary in the United States as a High School Chemistry Teacher pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an Application for Permanent Employment Certification, ETA Form 9089, certified by the United States Department of Labor (DOL).

The Director denied the petition, finding that the petitioner failed to establish that it had the ability to pay the proffered wage from the priority date of January 7, 2013 onward.

The petitioner filed a timely appeal, along with a brief from counsel and supporting documentation. 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 provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. 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 establish its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is January 7, 2013, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Upon review of the entire record, including evidence submitted on appeal and in response to our request for evidence, we find that the petitioner has overcome the ground for denial in the director's decision. We determine that the petitioner has established that the beneficiary has the advanced degree, experience and other requirements required by the terms of the ETA Form 9089. Additionally, the petitioner has established that it has the ability to pay the proffered wage to the beneficiary from the priority date onward.

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, that burden has been met.

ORDER: The appeal is sustained. The petition is approved.