



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: DEC 31 2014

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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 (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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved. The approval was subsequently revoked by the Director, Nebraska Service Center (Director), on the ground that the evidence of record did not establish that the beneficiary had at least a bachelor's degree, as required to be eligible for classification as an advanced degree professional. The revocation decision is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the approval of the petition reinstated.

The petitioner is a software development company. Its Form I-140, Immigrant Petition for Alien Worker, was filed on December 14, 2011, seeking to permanently employ the beneficiary in the United States as a lead analyst 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 was accompanied by an Application for Permanent Employment Certification, ETA Form 9089, that was filed with the U.S. Department of Labor (DOL) on August 1, 2011, and certified by the DOL (labor certification) on October 18, 2011. The Form I-140 petition was approved on December 21, 2011.

On July 29, 2013, the Director issued a Notice of Intent to Revoke (NOIR) the approval of the petition on the ground that it did not appear the beneficiary had the requisite bachelor's degree to be eligible for classification as an advanced degree professional. When the petitioner did not respond to the NOIR, the Director issued a Notice of Revocation on October 14, 2013.

The petitioner filed an appeal with supporting documentation. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

On May 9, 2014, we issued a Notice of Intent to Dismiss (NOID) the appeal, which discussed the evidentiary deficiencies in the record and gave the petitioner 30 days to respond. The petitioner responded on June 6, 2014, with a brief from counsel and additional documentation that addressed the evidentiary deficiencies discussed in the NOID. We subsequently issued a Request for Evidence (RFE) on October 14, 2014, to supplement the record with specific additional documentation. The petitioner responded on November 28, 2014, with a letter from counsel and the requested documentation.

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 of the job offered 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 August 1, 2011, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Based on the entire record, including the evidence submitted in response to the NOID and the RFE, we find that the petitioner has established that the beneficiary more likely than not had all the education, training, and experience specified on the ETA Form 9089, and required for classification as an advanced degree professional, as of the priority date. Therefore, the petitioner has overcome the basis for revocation in the Director's decision. We also determine that the petitioner has established its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. Accordingly, we will withdraw the Director's revocation decision and reinstate the approval of the petition under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the beneficiary as an advanced degree professional.

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

ORDER: The appeal is sustained. The Notice of Revocation issued by the Director on October 14, 2013, is withdrawn. The approval of the petition is reinstated.