



U.S. Citizenship  
and Immigration  
Services

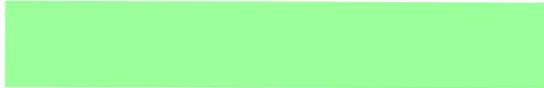
(b)(6)



DATE: FEB 12 2014 OFFICE: NEBRASKA SERVICE CENTER

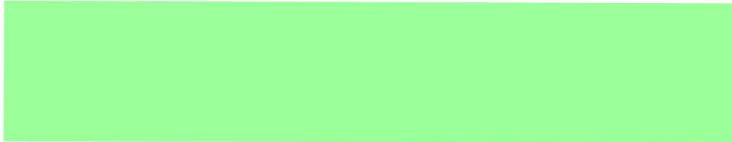


IN RE: Petitioner:  
Beneficiary:



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)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg

Chief, Administrative Appeals Office

NON-PRECEDENT DECISION

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**DISCUSSION:** The Acting Director, Nebraska Service Center (acting director), denied the employment-based, immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on the petitioner's motion to reopen and reconsider.<sup>1</sup> The motion will be granted, the AAO's decision will be withdrawn, the appeal will be sustained, and the petition will be approved.

The petitioner operates a medical clinic. It seeks to permanently employ the beneficiary in the United States as an acupuncturist. The petition requests classification of the beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A).

An ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL), accompanies the petition. The petition's priority date, which is the date the DOL accepted the labor certification for processing, is August 28, 2008. See 8 C.F.R. § 204.5(d).

The acting director found that the petition lacked initial evidence, including evidence of the petitioner's continuing ability to pay the beneficiary's proffered wage, and of the beneficiary's qualifications for the offered position and the requested classification of advanced degree professional. Accordingly, the acting director denied the petition on September 3, 2011.

On June 3, 2013, the AAO dismissed the petitioner's appeal. After considering the wages the petitioner paid the beneficiary and its annual amounts of net income and net current assets, the AAO found that the petitioner failed to demonstrate its continuing ability to pay the beneficiary the proffered wage. In its Request for Evidence (RFE) of October 10, 2013, the AAO also stated that the record lacked evidence of the beneficiary's qualifying training for the offered position as specified on the labor certification.

The AAO reviews cases anew, without deferring to previous legal conclusions. See *Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal and motion.<sup>2</sup>

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<sup>1</sup> The petitioner states in Part 2 of the Form I-290B, Notice of Appeal or Motion, that it is filing an "appeal." The AAO, however, lacks authority to review its own decisions on appeal. See U.S. Dep't of Homeland Sec. Delegation No. 0150.1, par. (2)(U) (Mar. 1, 2003) (authorizing the AAO to adjudicate only the appeals stated in the former regulation at 8 C.F.R. § 103.1(f)(3)(iii) (2002)). Because the petitioner's filing contains documentary evidence of new facts and alleges that the AAO misapplied law, the AAO treats the filing as a motion to reopen and reconsider and grants the motion. See 8 C.F.R. §§ 103.5(a)(2),(3).

<sup>2</sup> The instructions to Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1), allow the submission of additional evidence on appeal and motion. The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on motion. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

NON-PRECEDENT DECISION

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A petitioner must establish that the beneficiary possessed all of the education, training, and experience specified on the accompanying labor certification by the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158, 159 (Acting Reg'l Comm'r 1977). A petitioner must also demonstrate its continuing ability to pay the beneficiary's proffered wage from the petition's priority date onward. 8 C.F.R. § 204.5(g)(2); *see also Matter of Great Wall*, 16 I&N Dec. 142, 144 (Acting Reg'l Comm'r 1977).

Upon review of the entire record in the instant case, including additional evidence submitted on appeal and in response to the AAO's RFE, the petitioner has established, by a preponderance of the evidence, the beneficiary's qualifications for the offered position by the petition's priority date. Considering the totality of the circumstances, the petitioner has also demonstrated its continuing ability to pay the beneficiary's proffered wage from the petition's priority date onward. Accordingly, the acting director's decision is withdrawn, and the petition is approved under section 203(b)(2)(A) of the Act.<sup>3</sup>

The burden of proof in these proceedings rests solely with the petitioner. 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 motion is granted, the AAO's decision of June 3, 2013 is withdrawn, the appeal is sustained, and the petition is approved.

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<sup>3</sup> Contrary to counsel's assertion on motion, the AAO finds [REDACTED] – not the corporation's sole shareholder, [REDACTED], – to be the petitioner in this matter. The employer's name on the labor certification is not determinative of the petitioner where both the labor certification and the Form I-140, Petition for Alien Worker, state the corporation's federal employer identification number and copies of the sole shareholder's personal tax returns do not include Schedules C Profit or Loss from Business (Sole Proprietorship).