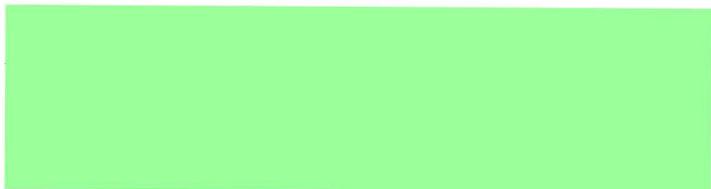


(b)(6)

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



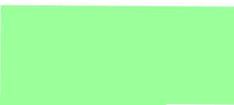
U.S. Citizenship
and Immigration
Services



DATE: JUN 03 2014

OFFICE: NEBRASKA SERVICE CENTER

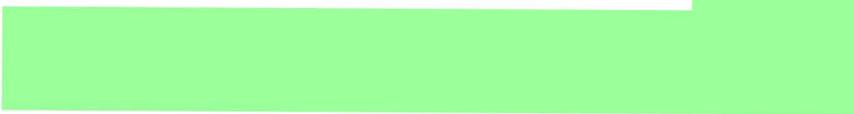
FILE:



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:

SELF-REPRESENTED

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. 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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director in accordance with the following.

The petitioner describes itself as a custom software development and programming business. It seeks to permanently employ the beneficiary in the United States as a “Computer Systems Analyst.” The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ 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 director’s decision denying the petition concludes that the beneficiary does not meet the experience requirements of the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master’s degree in “Computers, IT, Science, Business, Commerce, Engg or related field.”
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: None accepted.
- H.8. Is there an alternate combination of education and experience that is acceptable? Yes.
- H.8-A. If Yes, specify the alternate level of education required: Bachelor’s degree.
- H.8-B. If Other is indicated in question 8-A, indicate the alternate level of education required: Left blank.
- H.8-C. If applicable, indicate the number of years experience that is acceptable in question 8: “5.”
- H.9. Is a foreign educational equivalent acceptable? Yes.
- H.10. Is experience in an alternate occupation acceptable? Yes.
- H.10-A. If Yes, number of months experience in alternate occupation required: “60.”
- H.10-B. Identify the job title of the acceptable alternate occupation: “SW Engineer, Programmer, System Analyst, programmer analyst or related.”

¹ Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees, whose services are sought by an employer in the United States.

The director denied the instant petition because the beneficiary did not possess a master's degree and 60 months of experience in an alternate occupation as a "SW Engineer, Programmer, System Analyst, programmer analyst or related." The record reflects that the beneficiary possesses a Master's degree in Electrical Engineering from [REDACTED], awarded on December 19, 2007.

After a review of the record and the evidence submitted on motion, we find that the beneficiary meets the educational requirements of the labor certification. However, the petition is not approvable at this time as the location of the worksite for the position offered is unclear, which calls into question whether a *bona fide* job offer exists. The labor certification states that the primary worksite address is located in Milpitas, California. The Form I-140, which was filed on January 10, 2012, states that the beneficiary resides in Irving, Texas, whereas the labor certification, which has a filing date of May 10, 2011, states that the beneficiary resides in Cupertino, California. The labor certification does not state any travel requirements for the position offered or that any work may be performed remotely. The Forms W-2 issued to the beneficiary for 2011 and 2012 state that he resides in Cupertino, California, which also conflicts with his address stated on the Form I-140. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

In view of the foregoing, the previous decision of the director will be withdrawn. The petitioner has established that the beneficiary meets the educational requirements of the labor certification. However, the petition is remanded to the director for consideration of whether a *bona fide* job offer exists. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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). The petitioner has not met that burden.

ORDER: The director's decision of August 21, 2013 is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision.