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



U.S. Citizenship
and Immigration
Services



DATE: MAY 16 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. 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

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and motion to reconsider. The AAO will affirm its previous decision. The appeal remains dismissed.

The petitioner describes itself as a financial services firm. It seeks to employ the beneficiary permanently in the United States as a staff accountant. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director denied the petition on June 19, 2013, finding that the petitioner had failed to establish its continuing ability to pay the proffered wage from the priority date onward and failed to establish that the beneficiary possessed the experience required by the visa classification.

The petitioner initially filed the Form I-140, Immigrant Petition for Alien Worker on September 14, 2012. The petitioner requested visa classification for the beneficiary as a second preference advanced degree professional.¹ As set forth on the approved labor certification, the requirements for the position are a Bachelor's degree in Accounting and 60 months experience in the job offered or a Master's degree and two years of experience in the job offered. The record indicates that the beneficiary's highest level of education is a Bachelor's degree in Accountancy from the [REDACTED] of the Philippines conferred in 1983. Therefore, in order to qualify for classification as a second preference advanced degree professional, she

¹ In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Section 203(b)(2) of the Act also includes aliens "who because of their exceptional ability in the sciences, arts or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States." The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered."

On Part 2.d. of the Form I-140, the petitioner indicated that it was filing the petition for a member of the professions holding an advanced degree or an alien of exceptional ability. The record does not indicate that the petition seeks to classify the beneficiary as an alien of exceptional ability.

must have obtained 60 months (five years) of progressive experience following her bachelor's degree as of the June 11, 2012, priority date established by the ETA Form 9089.²

The director requested additional evidence (RFE) on March 1, 2013 pertinent to the petitioner's ability to pay the proffered wage and the beneficiary's required 60 months of experience.³ He directed that the response must include the petitioner's 2011 annual reports, U.S. tax returns or audited financial statements. As the record contained no evidence that the beneficiary had acquired 60 months of experience in the job offered following her bachelor's degree, the director also requested employment verification letters consistent with the requirements of 8 C.F.R. § 204.(k)((3)(i)(B).

The director denied the petition on June 19, 2013, noting that he had received no response to the RFE previously issued.

The petitioner filed a timely appeal, indicating on the Form I-290B, Notice of Appeal or Motion that it would submit all documents to the AAO within 30 days. No other statement appeared on

² The petitioner must establish that its ETA Form 9089 job offer to the beneficiary is realistic and *bona fide*. The petitioner must show that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. See 8 C.F.R. § 204.5(k)(3)(i). The petitioner must also demonstrate that that it has the continuing ability to pay the proffered wage. See 8 C.F.R. § 204.5(g)(2). The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case the priority date is June 11, 2012, as stated on the ETA Form 9089 filed on behalf of the beneficiary. The proffered wage is stated as \$28.72 per hour, which amounts to \$59,737.60 per year. There is no claim in the record that the petitioner has employed the beneficiary.

³ Relevant to five years of progressive experience in the specialty following a baccalaureate degree, the regulation at 8 C.F.R. § 204.5(k) provides in relevant part:

(3) *Initial Evidence*. The petition must be accompanied by documentation showing that he alien is a professional holding an advanced degree or an alien of exceptional ability in the sciences, the arts, or business.

(i) To show that he alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post -baccalaureate experience in the specialty.

the Form I-290B and no further communication was received from the petitioner. On March 13, 2014, the AAO summarily dismissed the appeal. The AAO additionally noted that the corporation website maintained by the state of California does not list a business entity with the petitioner's name, but lists an entity with a slightly different spelling. It instructed the petitioner in any future filings to verify that its business is in valid status and provide evidence of its correct corporate name and Federal Employment Identification Number (FEIN). See footnote 1, AAO decision, March 13, 2014.

The petitioner has filed a motion to reopen and reconsider the AAO's summary dismissal of the appeal.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the petitioner submits copies of its 2011 and 2012 federal income tax returns. While the AAO accepts the petitioner's motion as a motion to reopen based on the submission of the petitioner's 2012 tax return which establishes its ability to pay the proffered wage through its net current assets,⁴ the AAO finds no basis to overturn its prior decision or the director's prior decision that the beneficiary failed to meet the minimum requirements of the labor certification.

⁴ Besides net income and as an alternative method of reviewing a petitioner's ability to pay a proposed wage, United States Citizenship and Immigration Services will examine a petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. It represents a measure of liquidity during a given period and a possible resource out of which the proffered wage may be paid for that period. For example, a corporate petitioner's year-end current assets and current liabilities are generally shown on line(s) 1 through 6 of Schedule L of its Form 1120 federal tax returns. Current liabilities are shown on line(s) 16 through 18 of Schedule L. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the corporate petitioner is expected to be able to pay the proffered wage out of those net current assets.

According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

The petitioner failed to establish that the beneficiary acquired 60 months (five years) of progressive experience following her bachelor's degree, and therefore failed to qualify for a second preference visa category. Moreover, the petitioner failed to verify its valid status, its correct corporate name and provide evidence of its FEIN. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 not met that burden.

ORDER: The motion is granted as a motion to reopen. However, the AAO affirms its prior decision of March 13, 2014. The appeal remains dismissed.