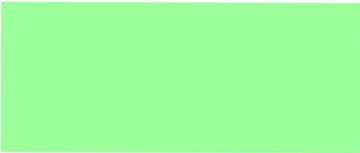




U.S. Citizenship
and Immigration
Services

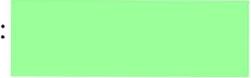
(b)(6)



DATE: SEP 30 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. 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 The appeal will be sustained, the director's decision will be withdrawn, and the petition will be approved.

The petitioner describes itself as a fuel production, technology, and equipment manufacturing business. It seeks to employ the beneficiary permanently in the United States as a project manager. 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 determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the petition. The director denied the petition accordingly.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), 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.

To be eligible for approval, the petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date onward. *See* 8 C.F.R. § 204.5(g)(2). The ETA Form 9089 was accepted on June 7, 2011, the priority date. The proffered wage as stated on the ETA Form 9089 was \$96,762.00 per year. On appeal, based on additional evidence requested and submitted, the petitioner demonstrated that it more likely than not has the ability to pay the difference between the wages paid to the beneficiary and the proffered wage from the priority date onward.

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 met that burden.

ORDER: The appeal is sustained. The director's decision is withdrawn, and the petition is approved.