



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 26 2015** 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.

Thank you.


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed an appeal with the Chief, Administrative Appeals Office (AAO), who withdrew the Director's decision and remanded the case for further consideration. The Director issued another decision, once again denying the petition. That decision was also appealed to the AAO. We will dismiss the appeal as moot.

The instant Form I-140, Immigrant Petition for Alien Worker, was filed on October 26, 2006 by [REDACTED] a software development and consulting company located in [REDACTED] New Jersey. The petitioner sought to permanently employ the beneficiary in the United States in the job of "Associate Manager-Recruiting" and to classify her 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). The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on June 12, 2006, and certified by the DOL (labor certification) on September 22, 2006.

On June 18, 2007 the Director denied the petition on the ground that the labor certification did not support the classification of the job opportunity as an advanced degree professional because it did not require the requisite baccalaureate or higher degree to be in a specific field of study. The petitioner filed a timely appeal. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

On August 1, 2011 we issued a Notice of Derogatory Information (NDI) to [REDACTED] indicating that evidence had come to light which raised doubts as to whether anyone was actually employed at the petitioner's place of business. We granted [REDACTED] 30 days to respond to the derogatory information, and also requested evidence of its ability to pay the proffered wage of the job offered. On August 30, 2011 we received a response to the NDI consisting of additional documentation addressing the subject matter of the NDI as well as a brief from counsel which advised that [REDACTED] had been acquired by another company in the same line of business – [REDACTED] ([REDACTED]) – pursuant to an Asset Purchase Agreement in January 2010. Therefore, [REDACTED] was the successor-in-interest to the original petitioner.

On January 20, 2012 we issued a decision withdrawing the Director's decision of June 18, 2007. We found that, under applicable law, an alien's degree need not be in a specific field related to an occupation in order for that individual to be classified as a professional or an advanced degree professional under the Act. We also found that the petition could not be approved based on the present record, and therefore remanded the case to the Director for further consideration and the issuance of a new decision.

On May 20, 2014, following a Request for Evidence and response from [REDACTED] in 2013, the Director issued a second decision that denied the petition on three grounds. First, the Director found that the evidence of record failed to establish that the beneficiary met the minimum educational and experience requirements on the labor certification – namely, a U.S. master's degree or a foreign equivalent degree, or alternatively a U.S. baccalaureate or a foreign equivalent degree plus five years of progressive experience in the specialty. Second, the Director found that the evidence of record

failed to establish that [REDACTED] is the successor-in-interest to [REDACTED]. Third, the Director found that [REDACTED] had reduced the proffered wage of the job offered as it appeared on the ETA Form 9089 filed by [REDACTED] so that the petition was no longer supported by a valid labor certification.

A timely appeal was filed on June 12, 2014, which was supplemented on July 11, 2014 by a brief from counsel and supporting documentation. Before we address this appeal any further, however, it is necessary to review two additional I-140 petitions filed by [REDACTED] on behalf of the beneficiary.

On November 26, 2010, while the initial petition was on appeal for the first time, [REDACTED] filed a Form I-140 (receipt number [REDACTED]) seeking skilled worker classification for the beneficiary as a “technical recruiter.” The petition was accompanied by a new ETA Form 9089, which had been filed with the DOL by [REDACTED] on August 28, 2008, and certified by the DOL on September 22, 2010. This second petition was denied by the Director on November 9, 2011, who found that the petitioner failed to establish its continuing ability to pay the proffered wage and also failed to resolve some evidentiary inconsistencies in the record.

On August 8, 2011, while the initial petition was still on appeal and the second petition was still before the Director, [REDACTED] filed another Form I-140 (receipt number [REDACTED]). Like the original petition filed by [REDACTED] in 2006, the new petition sought to employ the beneficiary in the job of “Associate Manager-Recruiting” and to classify her as an advanced degree professional. The petition was accompanied by a copy of the certified ETA Form 9089 that [REDACTED] had submitted with the original petition in 2006. The petition was approved by the Nebraska Service Center on January 9, 2015.

Thus, the petitioner has obtained employment-based immigrant status for the beneficiary in the job of “Associate Manager-Recruiting” with classification as an advanced degree professional – the same job and immigrant classification that were sought in the original petition filed in 2006. In effect, the January 2015 approval of the I-140 petition filed in 2011 ([REDACTED]) supersedes the May 2014 denial of the I-140 petition filed in 2006 ([REDACTED]). Therefore, the appeal currently before us of the Director’s denial decision in May 2014 is moot.

Accordingly, the instant appeal will be dismissed.

ORDER: The appeal is dismissed as moot.