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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**



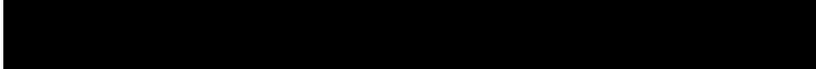
B6

Date: APR 04 2012

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 

Beneficiary: 

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

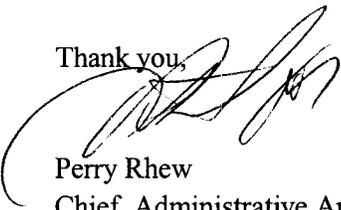
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on June 15, 2011, the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reopen and motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted and the appeal sustained. The petition will be approved.

The petitioner is a pharmaceutical manufacturer. It seeks to employ the beneficiary permanently in the United States as a quality control and distribution coordinator pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, the petition is accompanied by Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary had an associate degree in business as required by the Form ETA 750. The director denied the petition on November 3, 2007.

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

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the Department of Labor (DOL). *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted for processing on April 27, 2001. The proffered wage as stated on the Form ETA 750 is \$27.41 per hour (\$57,012.80 per year). The Form ETA 750 states that the position requires two years of experience in the proffered position. When initially certified by the Department of Labor, the Form ETA 750 required an Associate Degree in Business or a

related field plus two years of experience in the proffered position or two years of progressively responsible full-time administrative or quality control experience as an administrative assistant plus the following special requirements: "Required experience and education. Equivalent to an Associate Degree in Business or [a] related field, and/or two years [of] experience of progressively responsible full[-]time working in a manufacturing/production distribution environment with an emphasis in quality control. [The beneficiary] [m]ust posses[s] computer skills, mant & [E]nglish grammar skills [as well as] [d]emonstrated computer experience and/or training using MS Word and MS Excel. Bilingual: English/Spanish is a plus." On appeal, the petitioner submitted amendments and correspondence with the Department of Labor and stated that there was no education requirement, that the education requirement had been deleted prior to certification. However, the certified labor certification still stated an Associate's degree was required. Subsequent to AAO's dismissal of the petitioner's appeal, the petitioner contacted the Department of Labor and through correspondence established that the petitioner had previously sought to remove the education requirement. The changes were stamped and approved by the Department of Labor and submitted by the petitioner with its motion to reopen. The amended Form ETA 750, stamped by the Department of Labor on July 11, 2011 to reflect such amendments, only required two years of experience in the proffered position. The record reflects that the beneficiary has the required experience to meet the terms of the labor certification as amended by DOL.

Upon review of the entire record, including evidence submitted on motion and in response to a prior Request for Evidence (RFE) (issued by the AAO), the AAO concludes that the petitioner has established that the beneficiary is qualified for the position offered as well as established the petitioner's continuing ability to pay the proffered wage from the April 27, 2001 priority date onward.

Under these circumstances, the appeal shall be sustained and the petition shall be approved.

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 motion to reopen is granted. The AAO's decision dated June 15, 2001 is withdrawn. The appeal is sustained, and the petition is approved.