

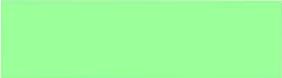


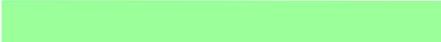
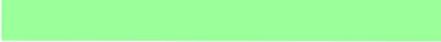
U.S. Citizenship
and Immigration
Services

(b)(6)

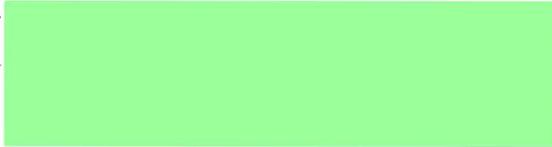


Date: **JUN 15 2012** Office: TEXAS SERVICE CENTER

FILE: 

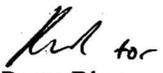
IN RE: Petitioner: 
Beneficiary: 

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Texas Service Center. The matter was appealed to the Administrative Appeals Office (AAO). The matter will be remanded to the director.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a dry wall applicator. The petition was filed on September 24, 2007. The petitioner did not have the original approved Form ETA 750, Application for Alien Employment Certification, from the Department of Labor (DOL) at the time of filing the petition. On July 27, 2007, the petitioner sent the director a letter requesting that they procure from DOL a duplicate copy of the labor certification. Additionally, the petitioner, in a letter sent to DOL dated October 1, 2007, requested a duplicate labor certification be sent to the director. The petition was denied on September 30, 2008, because no labor certification accompanied the petition.

On December 8, 2008, the director received the duplicate copy of the Form ETA 750.

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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Upon review of the record, the AAO has determined that the director did not have the benefit of analyzing the petition and labor certification. Therefore, the AAO will remand the case to the director for further action.

In view of the foregoing, the director's decision will be withdrawn. The petition is remanded to the director. 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.

ORDER: The director's decision is withdrawn. The petition is remanded to the director of for further action in accordance with the foregoing and entry of a new decision.