

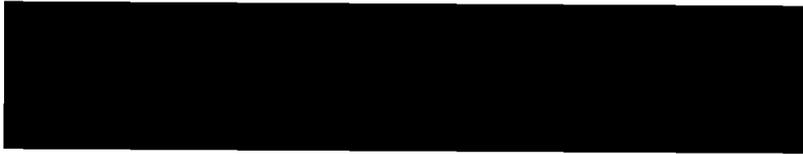
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

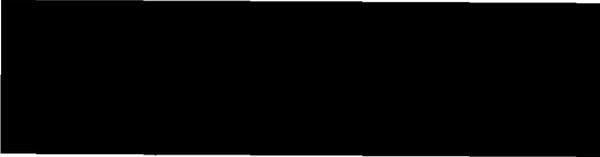


BF

MAY 30 2012
Date: 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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an information technology consulting firm. It seeks to employ the beneficiary permanently in the United States as a Network and Systems Administrator, SOC/O*Net job code 15-1071.00. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, electronically approved by the United States Department of Labor (DOL). The director denied the petition, finding that the beneficiary did not qualify for the position.

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.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, the petitioner must establish by a preponderance of the evidence that it has the ability to pay the proffered wage from the priority date until the beneficiary obtains legal permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 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).

The priority date of the petition is June 27, 2007, which is the date the labor certification was accepted for processing by the DOL.¹ *See* 8 C.F.R. § 204.5(d). The proffered wage specified on the ETA Form 9089 is \$34.63 per hour or \$72,030.40 per year (based on a 40-hour work per week). In the Form ETA 750, the petitioner specifies that all job applicants, in order to qualify for the position should have at least a bachelor's degree and a minimum of five years of work experience in the job offered.

¹ The petitioner originally filed this labor certification to support a second preference employment-based immigrant visa category (a member of the professions holding an advanced degree or an alien of exceptional ability). The record shows that the petition (file [REDACTED]) was denied on August 18, 2008. The same labor certification used earlier is being used again in this case, this time to support a third preference employment-based immigrant visa category (a professional or skilled worker).

Upon review of the entire record, including evidence submitted on appeal, the AAO is persuaded that the petitioner has the ability to pay the proffered wage of \$34.63 per hour or \$72,030.40 per year from June 27, 2007, and that the beneficiary is qualified to perform the duties of the position. 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 petition is approved.