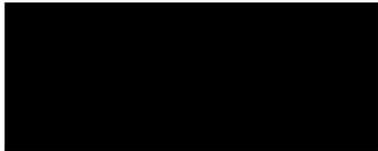


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



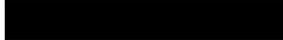
U.S. Citizenship  
and Immigration  
Services



B6

Date: OCT 16 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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. The petition will be approved.

The petitioner is a dental laboratory. It seeks to employ the beneficiary permanently in the United States as a dental lab technician. As required by statute, the petition is accompanied by a 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 it had the continuing ability to pay the beneficiary the \$42,245 proffered wage beginning on the priority date of the visa 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).

Section 203(b)(3)(A)(i) of 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), also 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, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is July 28, 2003, which is the date the labor certification was accepted for processing by the DOL, here July 28, 2003. *See* 8 C.F.R. § 204.5(d). The Immigrant Petition for Alien Worker (Form I-140) was filed on December 15, 2006.

Upon review of the entire record, including evidence submitted on appeal and in response to a Request for Evidence issued by the AAO, the AAO concludes that the petitioner has established that it is more likely than not that the petitioner has maintained the continuing ability to pay the proffered wage from the priority date onward and the beneficiary had all the experience specified on the Form ETA 750 as of February 22, 2001. Considering the overall magnitude of the petitioner's business activities (positive net income and net current assets from 2003 through 2010), the willingness and demonstrated ability of the sole proprietor to forego a small portion of officer compensation to pay the minimal difference between the petitioner's net income and the proffered wage from 2003 through 2009 and the difference between the petitioner's net current assets and the proffered wage in 2010, and the totality of the circumstances in this particular case, it is determined that the petitioner has established its continuing ability to pay the proffered wage from the priority date onward. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

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, and the petition is approved.