

(b)(6)

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

[Redacted]

DATE: APR 02 2013

OFFICE: TEXAS SERVICE CENTER FILE: [Redacted]

IN RE:

Petitioner:
Beneficiary:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment based visa petition was denied by the Director, Texas 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 engages in medical research. It seeks to employ the beneficiary permanently in the United States as a research assistant with classification as a professional pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to demonstrate that the beneficiary possessed the requisite bachelor's degree and that the petitioner failed to establish that it has had the continuing financial ability to pay the proffered wage. The director denied the petition on September 23, 2011.

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)(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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the 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 ETA Form 9089, Application for Permanent Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the ETA Form 9089 was accepted on January 19, 2010, which establishes the priority date. The proffered wage as stated on the ETA Form 9089 is \$16.69 per hour, which amounts to \$34,715.20. The educational requirements as set forth on the ETA Form 9089 require that the applicant have a Bachelor's degree in Biology or Related Field. No alternate fields of study or alternate combinations of education and experience are acceptable. The petitioner will accept a foreign equivalent educational credential.

The director's decision found that the beneficiary's Hungarian bachelor's degree was not in the field of study of biology or a related field. Following a review of the beneficiary's Bachelor's degree in Agricultural Engineering, together with his transcript of courses and the material submitted by the petitioner on appeal, the AAO concludes that the beneficiary's bachelor's degree is in a related field to biology and satisfies the requirements of the labor certification.

Additionally, following a review of the audited financial statements submitted by the petitioner on appeal, and the accompanying notes to the financial statements, the AAO concludes that the petitioner has had the ability to pay the proffered wage from the priority date forward.

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Upon review of the entire record, including evidence submitted on appeal, the AAO concludes that the petitioner has established its ability to pay the proffered wage and has established that the beneficiary possesses the required education. Accordingly, the petition is approved under section 203(b)(3)(A)(ii) or the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

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.