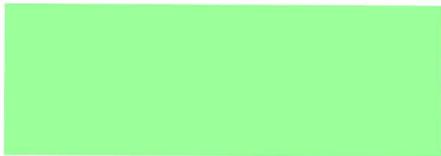


(b)(6)

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

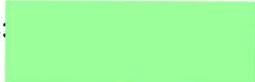


U.S. Citizenship
and Immigration
Services

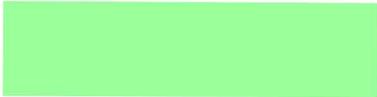


Date: **AUG 06 2013**

Office: TEXAS SERVICE CENTER

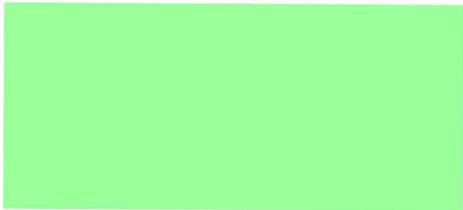
FILE: 

IN RE:

Petitioner: 

Beneficiary:

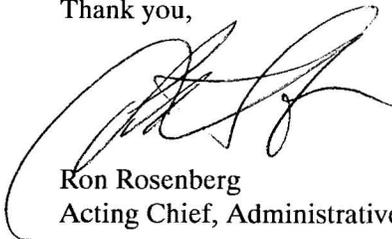
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3) ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 Director, Texas Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision. On April 9, 2013, the AAO granted the petitioner's motion to reopen and motion to reconsider, but affirmed its decision of March 13, 2012 which dismissed the petitioner's appeal. The matter is again before the AAO on a motion to reopen and motion to reconsider the AAO's April 9, 2013 decision. The motion to reopen will be granted. The motion to reconsider will be granted. The appeal will be sustained. The petition will be approved.

The petitioner is a construction material testing firm. It seeks to employ the beneficiary permanently in the United States as a civil engineer. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent 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 proffered wage beginning on the priority date of the visa petition, and denied the petition accordingly. The AAO then dismissed a subsequent appeal on the same grounds. The AAO then granted the petitioner's motion to reopen and motion to reconsider, but affirmed its prior decision dismissing the appeal on the grounds stated above. The matter now being considered is the petitioner's second motion to reopen and motion to reconsider filed on May 10, 2013.

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

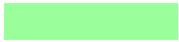
Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), 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 June 20, 2007, which is the date labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The Immigrant Petition for Alien Worker (Form I-140) was filed on December 31, 2007.

Upon review of the entire record, including evidence submitted on appeal and with the petitioner's motions to reopen and reconsider, 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 based on the totality of the petitioner's circumstances. *See Matter of Sonogawa*, 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,

(b)(6)



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8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained, and the petition is approved.