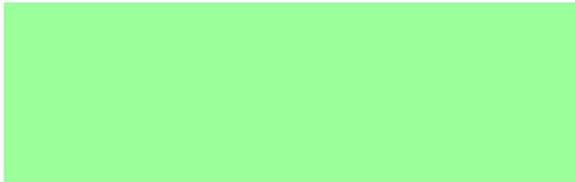


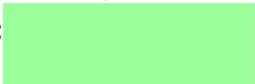
(b)(6)



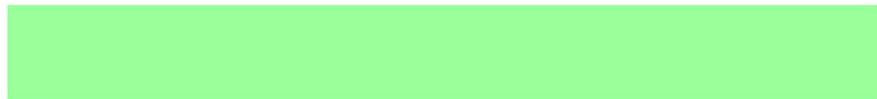
U.S. Citizenship
and Immigration
Services



DATE: FEB 14 2013

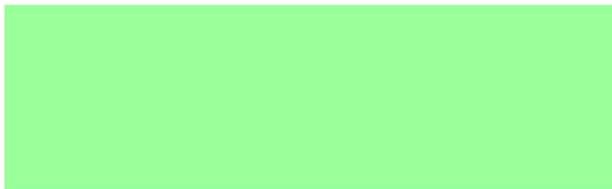
Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary:



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

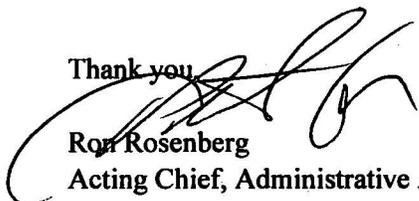
ON BEHALF OF PETITIONER:



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 employment based visa petition was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The matter is now before the AAO on petitioner's motion to reopen and/or reconsider. The petitioner's motion to reopen and reconsider will be approved. The appeal will be sustained and the petition will be approved.

The petitioner is a health care facility for handicapped children. It seeks to employ the beneficiary permanently in the United States as a "Disability Recreational Therapist." As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the beneficiary possessed the requisite two years of relevant post-secondary education as required by regulation and therefore could not be accorded status as a skilled worker.

The AAO dismissed a subsequent appeal.

The petitioner filed a motion to reopen and reconsider, citing the court's decision in *Hoosier Care, Inc. v. Chertoff*, 482 F.3d 987 (7th Cir., 2007).

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Based on a review of the underlying record and presented on appeal including the decision in *Hoosier v. Chertoff*, it is concluded that the record supports the approval of the petition pursuant to Section 203(b)(3)(A)(iii) of the Act.

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.