



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUN 03 2013**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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 preference visa petition was denied by the Director, Texas Service Center. A subsequent motion to reopen and reconsider was granted, and the director's decision was affirmed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a computer consulting service. It seeks to employ the beneficiary permanently in the United States as a systems analyst pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). 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). In his November 9, 2009 decision on the motion to reopen and reconsider, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.¹

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 (Acting Reg'l Comm'r 1977). The priority date of the petition is April 27, 2004, which is the date the 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 August 17, 2007.

Upon review of the entire record, including evidence submitted on appeal and in response to a Notice of Intent to Dismiss and Derogatory Information issued by the AAO on December 4, 2012, the AAO concludes that the petitioner has established that it is more likely than not that the beneficiary had all the education, training, and experience specified on the Form ETA 750 as of April 27, 2004. The

¹ The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part, that if the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree. In this case, regarding the educational requirements of the proffered position, the labor certification requires 10 years of grade school, 2 years of high school, 4 years of college, and a bachelor of technology degree in electronics engineering. The director stated that the beneficiary does not possess a U.S. four year baccalaureate degree or foreign equivalent in electronics engineering.

(b)(6)

beneficiary has earned at least a U.S. baccalaureate degree or foreign equivalent degree from a college or university.² Accordingly, the petition is approved under section 203(b)(3)(A)(ii) of 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.

² This office has reviewed the credentials information in the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). In this matter, EDGE states that the beneficiary's Bachelor of Technology (BTech) degree from Anna University in India represents "attainment of a level of education comparable to a bachelor's degree in the United States." <http://edge.aacrao.org/country/credential/bachelor-of-engineeringtechnology?cid=single> (accessed May 15, 2013).