



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: JUN 03 2013

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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 "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on February 13, 2012. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion to reopen will be granted.<sup>1</sup> The decision of the AAO dated February 13, 2012 will be withdrawn, and the petition will be approved.

The petitioner is a church. It seeks to employ the beneficiary permanently in the United States as a choral director 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). The director determined that the petitioner did not establish that it had the continuing ability to pay the proffered wage from the priority date, and that the petitioner did not establish that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying work experience. The director denied the petition on April 9, 2008, and the petitioner appealed the director's decision.

In its decision dated February 13, 2012, the AAO determined that the petitioner had not established that it had the continuing ability to pay the proffered wage from the priority date. The AAO also determined that the petitioner had demonstrated that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying work experience.

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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien 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 priority date of the petition is November 26, 2002. The Immigrant Petition for Alien Worker (Form I-140) was filed on March 16, 2007.

Upon review of the entire record, including evidence submitted on motion, the AAO concludes that the petitioner has established that it is more likely than not that the petitioner has the continuing ability to

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<sup>1</sup> The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part, that "[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 [United States Citizenship and Immigration Service] policy." This motion meets the requirements of a motion to reopen, but does not meet the requirements of a motion to reconsider.

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pay the proffered wage beginning on the priority date. Accordingly, the petition is approved under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

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 motion to reopen is granted, the AAO's decision dated February 13, 2012 is withdrawn, and the petition is approved.