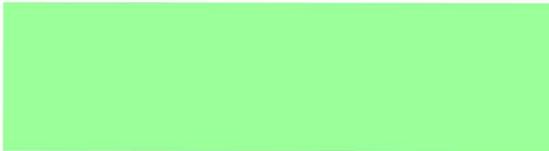


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 06 2013

OFFICE: TEXAS SERVICE CENTER

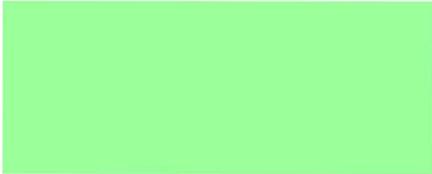
FILE: 

IN RE: Petitioner:
 Beneficiary:



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

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,

John H. For

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the director's decision will be withdrawn, and the petition will be approved.

The petitioner describes itself as a business engaged in the engineering, design, manufacture and sale of wind turbines. It seeks to employ the beneficiary permanently in the United States as a generators and transformers services supervisor. The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The director's decision denying the petition concludes that the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree as required by the terms of the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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 beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's degree.
- H.4-B. Major Field of Study: Electrical Engineering
- H.5. Training: None required.
- H.6. Experience in the job offered: None required
- H.7. Alternate field of study: Electronics Engineering, or a related field.
- H.8. Is there an alternate combination of education and experience that is acceptable? No.
- H.8-A. If Yes, specify the alternate level of education required: Left blank.
- H.8-B. If Other is indicated in question 8-A, indicate the alternate level of education required: Left blank.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

- H.8-C. If applicable, indicate the number of years experience acceptable in question 8: Left blank.
- H.9. Is a foreign educational equivalent acceptable? Yes.
- H.10. Experience in an alternate occupation: 60 months of experience as an “Engineer, Specialist, Technician, Manager.”
- H.14. Specific skills or other requirements:

Certification in maintenance and troubleshooting of ABB converters.

****Please note that experience in 10-B must have included 5 years of experience in the commissioning, troubleshooting and/or maintenance of industrial-strength high-voltage/high-capacity electrical machines (generators and/or transformers), including at least 3 years of wind industry experience in commissioning, installation and/or troubleshooting of electrical systems for wind turbines; OR any suitable combination of education, training and/or experience.****

The AAO sent the petitioner a request for evidence (RFE) on February 27, 2013. The petitioner responded with new evidence addressing each of the points of the AAO’s RFE. After a review of the record and the evidence submitted on appeal, the AAO finds that the beneficiary is qualified for the instant position.

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 director’s decision is withdrawn, and the petition is approved.