



U.S. Citizenship
and Immigration
Services

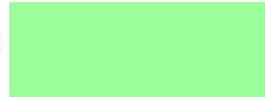
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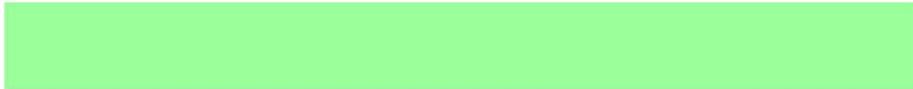
OFFICE: TEXAS SERVICE CENTER

FILE:



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:

SELF-REPRESENTED

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the petition will be approved.

The petitioner is a regional public school. It seeks to employ the beneficiary permanently in the United States as a special education teacher pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (Act), 8 U.S.C. §1153(b)(3)(A)(ii).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.

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 July 21, 2011, 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 March 8, 2012.

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 on appeal.

As required by statute, the petition is accompanied by a Form ETA 9089 Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The director, therefore, denied the petition on April 19, 2012. The director dismissed a subsequent motion on August 8, 2012 and the petitioner appealed to the AAO. On May 1, 2013, the AAO issued a request for evidence (RFE) to establish the petitioner's continuing ability to pay the proffered wage of \$40,900 from the priority date of July 21, 2011, up to the present.

Upon review of the entire record, including evidence submitted on appeal and in response to the RFE, 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 9089 as of July 21, 2011; and, that the petitioner has demonstrated the ability to pay the proffered wage from the July 21, 2011 priority date.² The beneficiary may be classified as a professional because she has earned at least a

¹ Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² In response to RFE the petitioner submitted copies of the Forms W-2, Wage and Tax Statements, issued to the beneficiary for 2011 and 2012, and evidence of wages paid to the beneficiary during 2013, and supporting financial statements.

bachelor's degree or foreign equivalent degree from a college or university. Accordingly, the petition is approved under section 203(b)(3)(A)(ii) or 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.
