

(b)(6)

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

Date: **MAY 06 2013** Office: NEBRASKA 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center. On April 21, 2010, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner is a general contractor providing painting and wall covering services. It seeks to employ the beneficiary permanently in the United States as a painter and to classify her as a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). 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 failed to demonstrate that the beneficiary satisfied the minimum level of experience stated on the labor certification. The director further determined that the petitioner had failed to demonstrate its continuing ability to pay the proffered wage to the beneficiary since the priority date. The director revoked the prior approval of the petition on June 11, 2010.

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.

To be eligible for approval, the petitioner must establish by a preponderance of the evidence that it has the ability to pay the proffered wage from the priority date until the beneficiary obtains legal permanent residence. See 8 C.F.R. § 204.5(g)(2). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The priority date of the petition is April 30, 2001, which is the date the labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d). The proffered wage listed on the Form ETA 750 is \$15.32 per hour or \$31,865.60 per year (based on a 40-hour work per week). In the Form ETA 750, the petitioner specifies that all job applicants, in order to qualify for the position, should have at least two years of work experience in the job offered or in a related occupation.

Upon review of the entire record, including evidence submitted on appeal, the AAO is persuaded that the petitioner has the ability to pay the full proffered wage of \$31,865.60 per year from April 30, 2001, and that the beneficiary had the required two years of experience in offered job of painter specified on the Form ETA 750 as of April 30, 2001. 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.

Accordingly, the prior decision revoking the approval of the petition is withdrawn and the petition is approved under section 203(b)(3)(A)(i) or the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

ORDER: The appeal is sustained, and the petition is approved.