

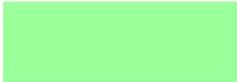
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

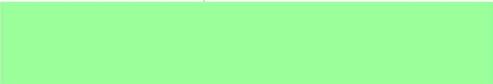
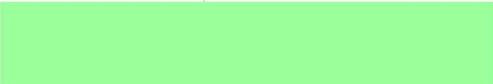


U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAY 08 2013 OFFICE: TEXAS SERVICE CENTER

FILE: 

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 Director, Texas Service Center (director), denied the employment-based immigrant visa petition and dismissed the petitioner's subsequent motion to reopen. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal after withdrawing its initial decision and reopening the matter for further consideration. Counsel filed a motion to reopen and reconsider the AAO decision. On April 10, 2012, the AAO granted the motion, vacated its previous decision, and indicated that a new decision would be issued. Upon further review, the AAO will withdraw the director's decision, sustain the appeal, and approve the petition.

The petitioner seeks to permanently employ the beneficiary in the United States as a programmer analyst. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).² The priority date of the petition is July 26, 2004.³

The two issues on motion are whether [REDACTED] is a successor-in-interest to the petitioner, [REDACTED] and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification.

The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The first issue is whether [REDACTED] is a successor-in-interest to the petitioner. During the adjudication of the appeal, the AAO discovered that the petitioner was no longer in existence. The instant petition must be supported by a valid labor certification. *See* 8 C.F.R. 204.5(l)(3)(i). A labor certification is only valid for employment with the sponsoring employer named on the labor certification form. *See* 20 C.F.R. § 656.30(c)(2) (2004). If the petitioner no longer exists, the petition is moot and cannot be approved.⁴

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

² The current DOL regulations concerning permanent labor certifications went into effect on March 28, 2005. *See* 20 C.F.R. pt. 656. The instant labor certification was filed with the DOL prior to March 28, 2005. Therefore, it is governed by the regulations in effect prior to March 28, 2005 at 20 C.F.R. pt. 656 (2004).

³ The priority date is the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

⁴ A petitioner must establish that it is eligible for the requested benefit at the time of filing and must

Counsel claims that the instant petition is not moot because [REDACTED] merged with [REDACTED] and is therefore a successor-in-interest to the petitioner.⁵ On motion, counsel submitted new evidence documenting its merger with [REDACTED]. The evidence in the record also establishes that the job opportunity with [REDACTED] is likely the same as originally offered on the labor certification and that [REDACTED] is eligible for the immigrant visa in all respects. Therefore, [REDACTED] has established on motion that it is a successor-in-interest to [REDACTED].

The second issue is whether the beneficiary possessed the minimum level of education and experience stated on the labor certification. 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 Dec. 158, 159 (Acting Reg'l Comm'r 1977). Following a review of the entire record of proceeding, including new evidence submitted on motion, it is concluded that [REDACTED] has established by a preponderance of the evidence that the beneficiary possessed all of the education and experience specified on the labor certification as of the priority date.

Therefore, it is concluded that the beneficiary qualifies for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act.⁶

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.

continue to be eligible through adjudication. 8 C.F.R. § 103(b)(1). In addition, an approved I-140 petition filed under section 203(b)(3)(A) of the Act is automatically revoked upon the termination of the employer's business. *See* 8 C.F.R. § 205.1(a)(3)(iii)(D).

⁵ There are no statutory or regulatory provisions that address successor-in-interest determinations for employment-based immigrant visa petitions. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986), a binding, legacy Immigration and Naturalization Service decision that was designated as a precedent by the Commissioner in 1986. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act.

⁶ The petition cannot be approved in the professional classification because the beneficiary does not possess a U.S. bachelor's degree or foreign equivalent, and that the job offer portion of the labor certification does not require at least a U.S. bachelor's degree or foreign equivalent degree. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C); *see also* 8 C.F.R. § 204.5(l)(3)(i).