

(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: NOV 06 2013

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

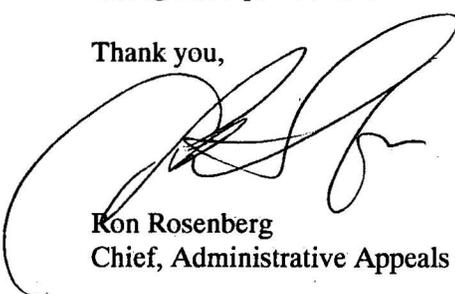
PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(ii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter 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 university. It seeks to permanently employ the beneficiary in the United States as a research technician. The petitioner requests classification of the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).¹

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).² The priority date of the petition is January 25, 2012.³ The labor certification states that the offered position requires a U.S. bachelor's degree (or a foreign equivalent degree) in biomedical sciences or biomedical technology.

The record of proceeding contains the diploma and transcripts for the beneficiary's *Laurea* degree in biomedical laboratory techniques from [REDACTED] Italy.

The director's decision denying the petition concluded that the petitioner failed to establish that the beneficiary's *Laurea* degree is the foreign equivalent of a U.S. bachelor's degree.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.⁴ The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁵

On appeal, the petitioner has established by a preponderance of the evidence that the beneficiary's *Laurea* degree is the foreign equivalent of a U.S. bachelor's degree, and therefore satisfies the educational requirements of the labor certification and the requested professional classification.

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

² See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

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

⁴ See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

⁵ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 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).

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NON-PRECEDENT DECISION

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained.