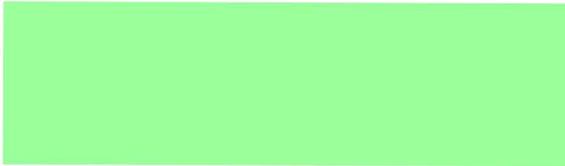


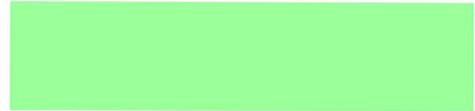


**U.S. Citizenship
and Immigration
Services**

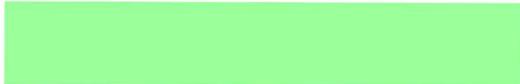
(b)(6)



DATE: **NOV 20 2013** OFFICE: TEXAS SERVICE CENTER

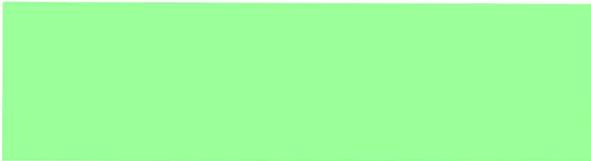


IN RE: Petitioner:
Beneficiary:



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.

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 preference visa petition was denied by the Director, Texas Service Center. The director dismissed the petitioner's motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an insurance provider. It seeks to employ the beneficiary permanently in the United States as a senior application integration specialist. The petitioner requests classification of the beneficiary 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).

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 petition failed to establish whether the beneficiary possessed the minimum education requirement required by the terms of the labor certification. The director denied the petition on March 23, 2011. The director dismissed the petitioner's motion to reopen and reconsider on September 7, 2011.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. 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 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 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 January 24, 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 9, 2011.

Upon review of the entire record, the AAO concludes that the petitioner has established that it is more likely than not that the beneficiary had all the education and experience specified on the labor

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 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).

certification as of the priority date. The beneficiary may be classified as a skilled worker because the job offered may be classified as such and his credentials meet the terms of the labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B)-(C). Accordingly, the director's decision of March 23, 2011 is withdrawn, and the instant petition is approved under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

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.