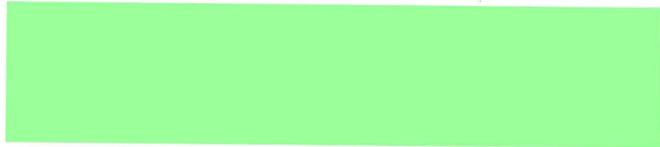


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

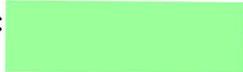
(b)(6)



DATE: SEP 05 2013

OFFICE: TEXAS SERVICE CENTER

FILE:



IN RE:

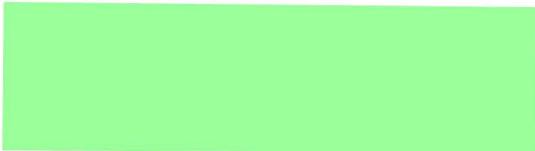
Petitioner:

Beneficiary:



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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Handwritten signature of Ron Rosenberg.

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 matter will be remanded to the director for further action, consideration, and the entry of a new decision in accordance with the findings below.

The petitioner describes itself as an asset optimization business. It seeks to permanently employ the beneficiary in the United States as an operations research analyst I. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked box “e” at Part 2, indicating that it seeks to classify 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). 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 priority date of the petition, which is the date the DOL accepted the labor certification for processing, is April 19, 2012. *See* 8 C.F.R. § 204.5(d).

Section 203(b)(3)(A)(ii) 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. The director denied the petition concluding that the proffered position described on the labor certification did not require a U.S. bachelor’s degree or foreign equivalent degree and the submitted labor certification did not support the instant Form I-140 request for classification as a professional. Furthermore, the director stated that the petitioner’s request to change the visa classification of the instant petition prior to the director’s decision would not be approved.

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.<sup>1</sup>

Upon review of the record, the AAO notes that the petitioner states that the request for professional classification was a clerical error and that prior to the director’s March 26, 2013 decision, the petitioner submitted an amended Form I-140 requesting classification as a skilled worker. There is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) to readjudicate a petition under a different visa classification in response to a petitioner’s request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1988).

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<sup>1</sup> 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).

However, in the instant case, the petitioner requested a change in visa classification in response to a request for evidence (RFE) from the director and prior to the director issuing a decision. The request to change classification prior to a decision being issued may be considered by the director. *See e.g., USICS Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker, Questions and Answers, Question #2, finalized June 30, 2009* (“Although you may request a change of classification prior to adjudication to correct a clerical error in Part 2 of the form, the determination regarding whether to change the visa preference classification will be made by USCIS, based on the totality of the record”). While the Form I-140 and correspondence from counsel indicated that classification as a professional, pursuant to section 203(b)(3)(A)(ii) of the Act, was sought, contemporaneous correspondence from the petitioner does not document a desired visa preference classification. Rather, evidence from the petitioner only indicates its desire to permanently employ the beneficiary. As discussed above, the petitioner indicated that there was a clerical error on the Form I-140, prior to adjudication, and provided an amended Form I-140 requesting classification, pursuant to section 203(b)(3)(A)(i) of the Act, as a skilled worker. As such, the requested change of classification does not constitute a material change to the petition and could have been considered by the director. Therefore, the AAO will remand the case to the director for further consideration and action.

In view of the foregoing, the director’s decision will be withdrawn. The petition is remanded to the director. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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).

**ORDER:** The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and the entry of a new detailed decision.