



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 19 2014**

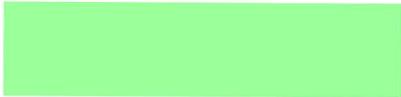
Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

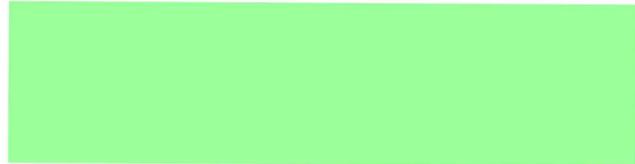
Petitioner:

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. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center (the director), and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained. The petition will be approved.

The petitioner is a software development and consulting firm. It seeks to employ the beneficiary permanently in the United States as a software engineer 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).<sup>1</sup> As required by statute, 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 is January 22, 2009, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum requirements stated on the labor certification. The director denied the petition on August 21, 2013.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 22, 2009, 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 August 14, 2007.

Upon review of the entire record, including evidence submitted on appeal and in response to Requests for Evidence (RFEs) we issued, we conclude 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 certification as of the priority date. Thus, the petitioner has overcome the ground for denial of the petition in the director's decision. Accordingly, the director's decision will be 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).

As always in visa petition proceedings, the burden of proof rests entirely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has met that burden.

**ORDER:** The director's decision dated August 21, 2013 is withdrawn. The appeal is sustained. The petition is approved.

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act provides for the granting of 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.