



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 12 2014 OFFICE: NEBRASKA SERVICE CENTER

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:

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Nebraska Service Center, (director) and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The case is again before the AAO on motion to reopen. The motion will be granted and the appeal will be sustained. The petition is approved.

The petitioner describes itself as a “Mechanical Consulting Engineering” business. It seeks to employ the beneficiary permanently in the United States as a mechanical engineer/designer 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). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).

The director determined that the petitioner failed to demonstrate the ability to pay the proffered wage as of the priority date. The director also found that the petitioner had not established that the beneficiary possessed a bachelor’s degree in mechanical engineering from an accredited university and, therefore, had not established that the beneficiary satisfied the minimum level of education stated on the labor certification. The director denied the petition on December 20, 2012. The AAO determined in its decision of September 27, 2013, that the petitioner had established the ability to pay the proffered wage, but affirmed the director’s determination that the petitioner had not established that the beneficiary possessed a bachelor’s degree in mechanical engineering from an accredited university. The petitioner filed a motion to reopen that is presently before the AAO.

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

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

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 July 14, 2004, 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 July 8, 2010.

Upon review of the entire record, including evidence submitted on motion to reopen, the AAO concludes that the petitioner has established that it is more likely than not that the beneficiary had all the education, training, and experience specified on the Form ETA 750 as of the priority date, and as previously addressed in its September 27, 2013 decision, that the petitioner has established its ability to pay the beneficiary’s proffered wage. Accordingly, the petition is approved under section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

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NON-PRECEDENT DECISION

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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.