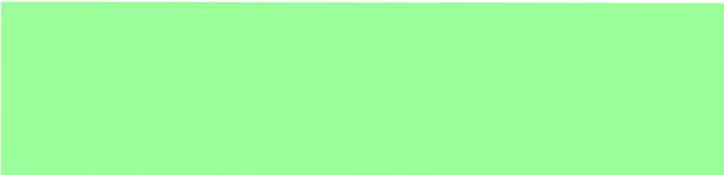


(b)(6)

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

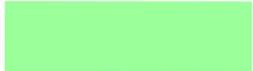


U.S. Citizenship
and Immigration
Services



DATE: JUN 10 2014

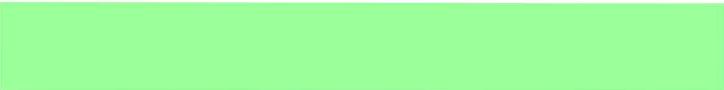
OFFICE: NEBRASKA SERVICE CENTER FILE:



IN RE:

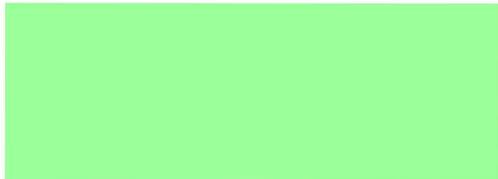
Petitioner:

Beneficiary:



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

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition on May 21, 2009. The case was dismissed by the Administrative Appeals Office (AAO) on October 26, 2012, reopened and dismissed again on March 7, 2013. Pursuant to an agreement between the parties in *Manohar's Delhi Palace DBA Delhi Palace vs. Alejandro Mayorkas, Director of U.S. Citizenship and Immigration Services*, No. CV 12-10444-BRO-JCO, 1 (C.D. Cal. 2013), the AAO reopened the matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for the purpose of entering a new decision. The appeal will be sustained. The petition will be approved.

The petitioner describes itself as a restaurant and banquet hall. It seeks to employ the beneficiary permanently in the United States as a cook (Indian), pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(1). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition.

The director denied the petition on May 21, 2009, concluding that the petitioner had failed to establish that the petitioner established its continuing ability to pay the proffered wage.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Based on a review of the record, including the materials submitted on appeal and in response to the AAO's request for evidence, the AAO concludes that the petitioner has established its ability to pay the proffered wage based on *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has met that burden. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is sustained. The prior decisions of the director and the AAO are withdrawn and the appeal is sustained. The petition is approved.