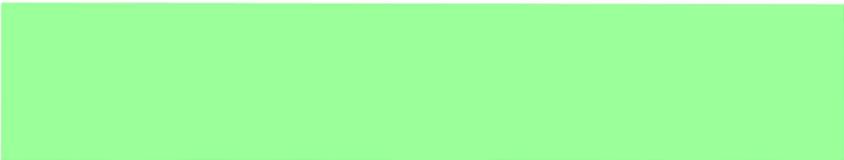




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: NOV 07 2014

OFFICE: NEBRASKA 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 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, Nebraska 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 The director's decision will be withdrawn and the appeal will be sustained.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 research, development of speech recognition technology/products firm. It seeks to employ the beneficiary permanently in the United States as senior quality assurance engineer I 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).¹ 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 director's decision concluded that the petitioner had failed to establish its ability to pay the proffered wage.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The ETA Form 9089 was filed on May 22, 2013.

Upon review of the entire record, including evidence submitted on appeal and in response to a Request for Evidence (RFE), the petitioner has established that it is more likely than not that it has the ability to pay the proffered wage as of the priority date. Thus, the petitioner has overcome the ground for denial of the petition in the director's decision. The director's decision will be withdrawn. Accordingly, the petition is approved under section 203(b)(3)(A)(ii) of the Act.

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 March 23, 2014 is withdrawn. The appeal is sustained. The petition is approved.

¹ Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), provides that "the term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."