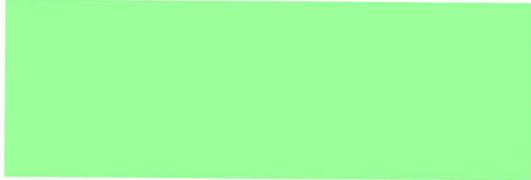




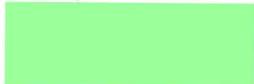
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: SEP 12 2014

OFFICE: TEXAS SERVICE CENTER

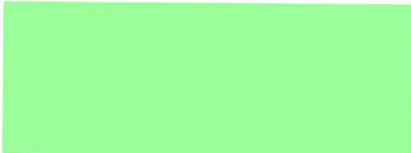
FILE: 

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as 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:

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 petition was denied Director, Texas Service Center (director). The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The case was returned to the AAO on motion to reopen and motion to reconsider. The AAO granted the motion to reconsider and again dismissed the appeal. The petitioner's subsequent motions to reopen and reconsider were dismissed by the AAO. The matter is now again before the AAO on motion to reopen and motion to reconsider. On reconsideration, the appeal is sustained and the petition is approved.

The petitioner is a Mexican restaurant. It seeks to employ the beneficiary permanently in the United States as a Mexican cook as a skilled worker or professional pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). 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 continued 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).

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, 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. 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 May 12, 2003, which is the date the labor certification was accepted for processing by the DOL. The petitioner must also demonstrate the continuing ability to pay the proffered wage beginning on the priority date. See 8 C.F.R. § 204.5(d).

Upon review of the entire record, including evidence submitted on appeal and on motion, we conclude that the petitioner has established that it is more likely than not that the petitioner had the ability to pay the proffered wage as of the priority date. Accordingly, the petition is approved under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

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.