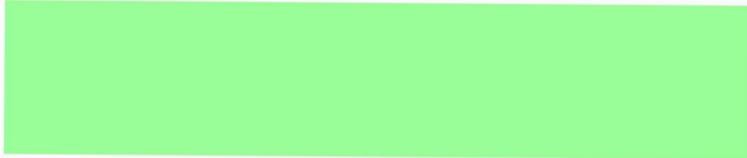


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

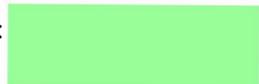
(b)(6)



DATE: FEB 10 2015

OFFICE: TEXAS SERVICE CENTER

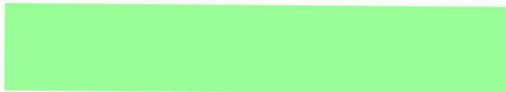
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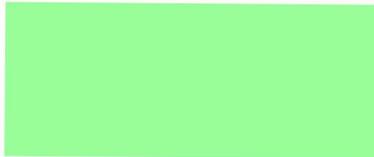
Petitioner:

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:

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 Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the director's decision will be withdrawn, and the petition will be approved.

The petitioner describes itself as a "wholesale fuel distribution" business. It seeks to employ the beneficiary permanently in the United States as a mechanical engineer in the professional category under Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).<sup>1</sup> 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 determined that the petitioner had not established: (1) that the beneficiary met the education and experience requirements of the labor certification; and (2) that it has had the continuing ability to pay the beneficiary's proffered wage as of the priority date, which is the date the labor certification was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The director denied the petition accordingly.

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

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date. The petitioner must also demonstrate that the beneficiary meets all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the offered position is for employment as a Mechanical Engineer at a proffered wage of \$64,000.00 per year and requires a Bachelor's degree in Mechanical Engineering and 24 months of experience as an "Engineer/ Mechanical, related."

<sup>1</sup> Section 203(b)(3)(A)(ii) of 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.

(b)(6)

*NON-PRECEDENT DECISION*

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After a review of the entire record, including the evidence submitted on appeal and in response to our notice of intent to dismiss and request for evidence, as well as after consultation with the DOL, we find that it is more likely than not that the petitioner has the ability to pay the proffered wage and that the beneficiary is qualified for the instant position.

The burden of proof in these proceedings rests solely with the petitioner. 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 appeal is sustained. The director's decision is withdrawn, and the petition is approved.