

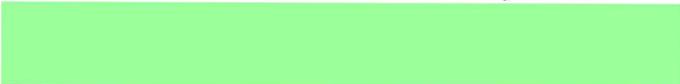
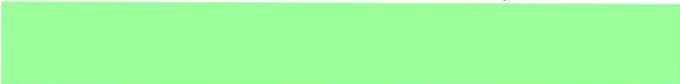


U.S. Citizenship
and Immigration
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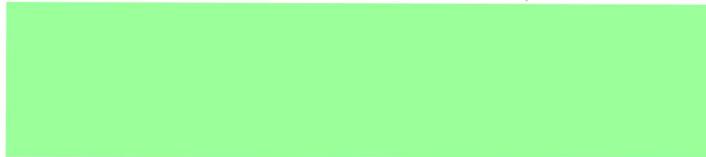


DATE: FEB 27 2015 OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

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,


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 matter is now before us on a motion to reopen and motion to reconsider. The motion to reconsider will be granted, our previous decision will be withdrawn, and the petition will be approved.

The petitioner is a designer and manufacturer of automotive sound systems and related software. It seeks to employ the beneficiary permanently in the United States as a senior mechanical design engineer – Korean accounts. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification) approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. Accordingly, on April 29, 2013, the director denied the petition. We dismissed a subsequent appeal on November 1, 2013.

A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The motion to reopen does not qualify for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner has provided no new facts supported with documentation not previously submitted.

The regulation at 8 C.F.R. § 103.5(a)(3) provides:

Requirements for a motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner states the reasons for reconsideration, supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. The motion to reconsider also establishes that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion to reconsider will be granted.

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.

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 April 20, 2012, 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 December 20, 2012.

Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the required bachelor's or foreign equivalent degree for the proffered position. Accordingly, the director denied the petition on April 29, 2013. On November 1, 2013, we affirmed the director's decision and determined that the petitioner had not established that the beneficiary met the minimum requirements of the labor certification.

Upon review of the entire record, including evidence submitted on appeal and in response to our Request for Evidence, we conclude 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 ETA Form 9089 as of April 20, 2012. The beneficiary may be classified as a skilled worker because the job offered may be classified as such and his credentials match the terms of the labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B)-(C). Accordingly, the petition is approved under section 203(b)(3)(A)(i) or 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 motion to reconsider is granted and our decision dated November 1, 2013, is withdrawn. The petition is approved.