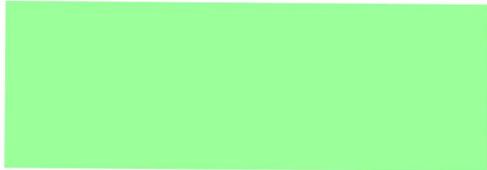


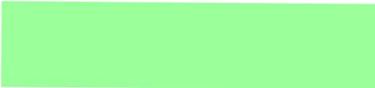
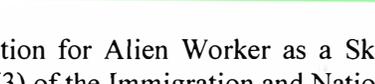
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U.S. Citizenship
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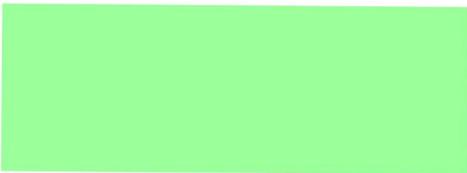


DATE: JAN 06 2015 OFFICE: NEBRASKA SERVICE CENTER FILE: 

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:

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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is an apparel merchant wholesaler. It seeks to employ the beneficiary permanently in the United States as a business operations specialist with classification as a professional or skilled worker 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 an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to demonstrate that the job offer was *bona fide*. The director denied the petition on December 29, 2009.

We placed the proceeding in abeyance and sought consultation with the DOL. The DOL issued a Notice of Intent to Revoke (NOIR) on October 22, 2013, but subsequently voided the NOIR and reinstated the validity of the labor certification on September 9, 2014. We issued a Request for Evidence (RFE) on September 23, 2014.

The AAO conducts 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 grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

We find that the job offer as described on the ETA Form 9089 is valid. The petitioner must also 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). Additionally, the petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, Application for Permanent Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977). Here, the ETA Form 9089 was accepted on September 15, 2008. Further, the petitioner established that the beneficiary has the educational credentials required by the ETA Form 9089.

Finally, the proffered wage as stated on the ETA Form 9089 is \$22.01 per hour, annualized to \$45,780.80 per year. Upon review of the entire record, including evidence submitted on appeal and in response to our RFE, we conclude that the petitioner has established its ability to pay the proffered wage to the beneficiary. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

Accordingly, the petition is approved under section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

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.