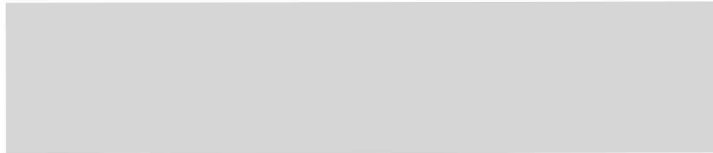




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 18 2015

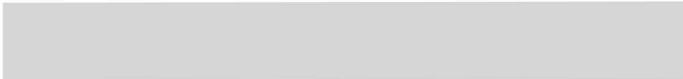
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE:

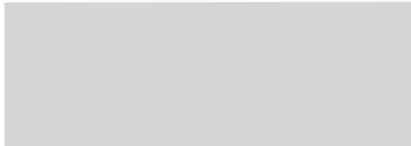
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153 (b)(2)(A)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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 The appeal will be sustained, the Director's decision will be withdrawn, and the petition will be approved.

The petitioner operates the largest public school system in the United States. It seeks to permanently employ the beneficiary as an Applications Developer - Financial Systems. The petition requests classification of the beneficiary as an advanced degree professional under section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A).

An ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL), accompanies the petition. The DOL accepted the labor certification application for processing on August 8, 2012, establishing the petition's priority date. *See* 8 C.F.R. § 204.5(d).

The Director concluded that the record did not demonstrate the beneficiary's possession of the post-baccalaureate experience required for the requested classification and the offered position by the petition's priority date. Accordingly, the Director denied the petition on July 15, 2014.

The appeal is properly filed and alleges specific errors in law and fact. We conduct appellate review on a *de novo* basis.¹ We consider all pertinent evidence of record, including new evidence properly submitted on appeal.²

The Beneficiary's Eligibility for the Classification Sought and the Offered Position

Section 203(b)(2)(A) of the Act provides visas to qualified immigrants who are members of the professions holding advanced degrees or their equivalents. The term "advanced degree" means:

any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(2).

¹ *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dep't of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). Federal courts have long recognized our *de novo* authority. *See, e.g., Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

² The instructions to Form I-290B, Notice of Appeal or Motion, allow the submission of additional evidence on appeal. *See* 8 C.F.R. § 103.2(a)(1) (incorporating a form's instructions into the regulations). The instant record provides no reason to preclude consideration of the documents submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

Based on the plain language of section 203(b)(2)(A) of the Act and the ordinary meaning of the term “degree” in an academic context, the record establishes the beneficiary’s possession of a foreign equivalent of a U.S. Bachelor’s degree upon completion of his studies and exams.³ Thus, the Director erred in concluding that the beneficiary could not have obtained five years of post-baccalaureate experience before the petition’s priority date of August 8, 2012. The Director’s decision will therefore be withdrawn.

Evidence of the Beneficiary’s Qualifying Post-Baccalaureate Experience

A petitioner must support a beneficiary’s claimed qualifying experience with copies of letters from former employers. 8 C.F.R. § 204.5(k)(3)(i)(B). The letters must include the names, addresses, and titles of the employers, and specific descriptions of the duties performed by the beneficiary. *Id.* “If such evidence is unavailable, other documentation relating to the alien’s experience or training will be considered.” 8 C.F.R. § 204.5(g)(1).

In response to our Notice of Derogatory Information and Intent to Dismiss (NOID), dated October 24, 2014, the petitioner submitted additional documentation establishing the beneficiary’s qualifying, post-baccalaureate experience. The record therefore establishes the beneficiary’s possession of at least five years of progressive, post-baccalaureate experience by the petition’s priority date as required for the requested classification and as specified on the accompanying labor certification. Accordingly, the petition must be approved.

The appeal will be sustained for the foregoing reasons. In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained, the Director’s decision of July 15, 2014 is withdrawn, and the petition is approved.

³ Online records indicate the beneficiary’s completion of his university studies in 2004 and the original issuance of his diploma on April 27, 2005. See [REDACTED] (accessed June 9, 2015).