



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-B-P-C-

DATE: NOV. 5, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a Presbyterian church, seeks to permanently employ the beneficiary in the United States as director of religious activities and education under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The I-140 petition was filed on July 3, 2014. As required by statute, it was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on September 26, 2013 and certified by the DOL (labor certification) on April 23, 2014.¹

The Director denied the petition on November 21, 2014, finding that the evidence of record did not establish that the Petitioner had the continuing ability to pay the proffered wage of the job offered from the priority date of the petition up to the present. The Petitioner filed a timely appeal. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(2) of the Act provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers 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 petitioner must also establish its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is September 26, 2013, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

¹ The ETA Form 9089 calls the proffered position an associate pastor. However, the job duties described in this document are identical to those described in the Form I-140 for the director of religious activities and education. Furthermore, the Standard Occupational Classification (SOC) code used by the DOL on the ETA Form 9089 to classify the position is 21-2021, Director of Religious Activities and Education. (The SOC system is used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.) Thus, the job at issue in this proceeding is one and the same despite the two different titles.

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Upon review of the entire record, we conclude that the Petitioner has established that the Beneficiary more likely than not had all the education, training, and experience specified on the ETA Form 9089 as of the priority date. We also determine that the Petitioner has established that it more likely than not has had the continuing ability to pay the proffered wage from the priority date up to the present. Accordingly, the petition will be approved under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the Beneficiary as an advanced degree professional.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of V-B-P-C-*, ID# 13465 (AAO Nov. 5, 2015)