U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-R-

DATE: APR. 24, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of clinical trial services, seeks to employ the Beneficiary as a medical research coordinator. It requests her classification under the third-preference, immigrant category as a professional. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based, "EB-3" category allows a U.S. business to sponsor a foreign national with a bachelor's degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's possession of the minimum education required for the offered position and the requested classification. The Director also concluded that the Petitioner did not demonstrate the required ability to pay the proffered wage.

On appeal, the Petitioner submits additional evidence that it asserts overcomes the grounds of denial. Upon *de novo* review, we will sustain the appeal.

A petition for a professional must include evidence that a beneficiary has a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C). A petitioner must also establish a beneficiary's possession, by a petition's priority date, of all the labor certification requirements.[1] Here, the accompanying labor certification states the minimum requirements of the offered position of medical research coordinator as a U.S. bachelor's degree, or a foreign equivalent degree, in medical technology or nursing.

The Petitioner submitted a copy of a diploma and corresponding transcripts indicating the Beneficiary's attainment of a bachelor of science degree in medical technology in 1988. The Petitioner also provided an independent evaluation of the Beneficiary's foreign educational credentials. The evaluation concludes that her four-year, Filipino degree equates to a U.S. bachelor of science degree in medical technology. The Director discounted the evaluation, noting that it did not describe the evaluator's qualifications. An evaluation of foreign educational credentials constitutes expert testimony. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988)

[1] This petition's priority date is May 6, 2013, the date the Department of Labor accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

(finding that petition adjudicators may consider statements from universities, professional organizations, or other sources as expert testimony).[2]

On appeal, the Petitioner submits documentation describing the evaluator's qualifications and provides two new evaluations. The new evaluations describe the qualifications of their respective evaluators and reach the same conclusion as the first evaluation. Thus, as required for the offered position and the requested classification, the record on appeal establishes the Beneficiary's possession, by the petition's priority date, of a bachelor's degree in an acceptable field of study. We will therefore withdraw the Director's contrary finding.

A petitioner must also demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.* Here, the labor certification states the proffered wage of the offered position of medical research coordinator as $63,690 a year. As previously noted, the petition's priority date is May 6, 2013. As of the appeal's filing, required evidence of the Petitioner's ability to pay in 2017 was not yet available. We will therefore consider its ability to pay only from 2013 through 2016.

USCIS records indicate the Petitioner's temporary employment of the Beneficiary in nonimmigrant visa status since 2009. The Petitioner submitted copies of IRS Forms W-2, Wage and Tax Statements, indicating that it paid the Beneficiary $31,200 in 2013 and 2014, and $43,820.40 in 2015. These amounts do not equal or exceed the annual proffered wage of $63,690. Based solely on the Petitioner's payments to the Beneficiary, the record therefore does not establish the Petitioner's ability to pay the proffered wage. Nevertheless, we credit the Petitioner's payments to the Beneficiary. It need only establish its ability to pay the annual differences between the proffered wage and the wages paid, or $32,490 in 2013 and 2014, and $19,869.60 in 2015. The Petitioner did not submit evidence of its payments to the Beneficiary in 2016. It must therefore demonstrate its ability to pay the full proffered wage that year.

As of the Director's decision, the record contained copies of only the first pages of the Petitioner's federal income tax returns for 2013 through 2015. The tax returns reflected sufficient net income in 2013 to pay the difference between the proffered wage and the wages paid, but insufficient net income to pay the differences in 2014 and 2015. The incomplete returns lacked information to calculate the Petitioner's net current assets.

On appeal, however, the Petitioner submits copies of its full tax returns from 2013 through 2016. The returns reflect sufficient net current assets to pay the differences between the proffered wage and the wages paid in 2014 and 2015. The 2016 tax returns also reflect sufficient net current assets

[2] To assess the reliability of an evaluation's conclusion, USCIS must therefore consider an evaluator's qualifications to issue the opinion. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (explaining that evidentiary weight afforded expert testimony depends, in part, on the extent of the expert's qualifications).

to pay the full proffered wage that year. Thus, the record on appeal establishes the Petitioner's ability to pay the proffered wage.

The record on appeal establishes the Beneficiary's possession of the minimum education required for the offered position and the requested classification. The Petitioner has also demonstrated its ability to pay the proffered wage from the petition's priority date onward.[3]

ORDER: The appeal is sustained.

Cite as *Matter of M-M-R-*, ID#.1264437 (AAO Apr. 24, 2018)

[3] The Director also concluded that, contrary to the instructions on the Form I-140, Immigrant Petition for Alien Worker, the Petitioner did not list the Beneficiary's last country of permanent residence abroad or the contact information of the form's signatory. *See* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations). On appeal, however, the Petitioner provides the missing information.