U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-D-G-, LLC

DATE: AUG. 30, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an online gaming business, seeks to employ the Beneficiary as a general and operations manager/chief executive officer. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. On appeal the Petitioner submits a brief and additional evidence and asserts that the evidence of record establishes its ability to pay the proffered wage. Upon *de novo* review, we find the Petitioner has demonstrated its ability to pay the proffered wage from the priority date onward; however, for the reasons discussed herein, the petition is not approvable. As such, we will withdraw the Director's decision and remand the case for further consideration and the issuance of a new decision.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

To be eligible for skilled worker classification, a beneficiary must possess at least two years of training or experience and meet the "educational, training or experience, and any other requirements

of the individual labor certification." 8 C.F.R. § 204.5(l)(3)(ii)(B). The labor certification requirements must be met by the priority date of the petition,[1] which in this case is August 3, 2016. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). Section H of the labor certification sets forth the minimum education, training, experience, and other requirements a beneficiary must meet to qualify for the proffered position. In this case, the labor certification requires at least five years of experience in the job offered or as a managing director, development director, or a related job to qualify for the proffered position.

In section K of the labor certification ("Alien Work Experience") six prior jobs were listed for the Beneficiary between 2000 and 2016. Four employment verification letters were submitted, detailing the following employment experience:

- (now known as) in as a managing director from June 2004 to December 2005;
- as development director from January 2006 to May 2008.
- in United Kingdom, as a managing director from June 2008 to May 2011; and
- in United Kingdom, as chief executive officer from December 2011 to November 2014.[2]

According to USCIS records, however, the Beneficiary reported different employment dates with and in his application for a nonimmigrant visa (NIV) filed with the U.S. Department of State in October 2015. On that application, the Beneficiary stated that his employment with commenced in November 2007, rather than June 2008 as alleged on the labor certification and in the employment verification letter. The alleged commencement date of November 2007 also conflicts with the information provided in the labor certification and verification letter from which both claim that the Beneficiary began working for in January 2006. On the NIV application, the Beneficiary also stated that his employment dates with were from November 2012 until September 2014. These dates conflict with the information provided in the labor certification and the letter from both of which allege that the Beneficiary's employment with ran from December 2011 to November 2014.

The discrepancies described above raise doubt about the veracity of the Beneficiary's claimed experience. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.*

[1] The priority date of a petition is the date the underlying labor certification was filed with the DOL.

[2] This experience letter does not meet the requirements of 8 C.F.R. § 204.5(g)(1) because it does not include the signatory's address. The Petitioner must resolve this issue in any future filing in this matter.

Given the present inconsistencies regarding the Beneficiary's claimed experience, we cannot find that the Beneficiary has the required experience.

III. CONCLUSION

We will remand this matter to the Director to further analyze the Beneficiary's claimed experience and any other issue the Director may deem relevant. On remand, the Director should provide the Petitioner with an opportunity to respond to the derogatory information noted above.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis and conclusion.

Cite as *Matter of R-D-G-, LLC.*, ID# 1654636 (AAO Aug. 30, 2018)