U.S. Citizenship and Immigration Services

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

MATTER OF S-F- INC.

DATE: DEC. 19, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a textile importer and distributor, seeks to employ the Beneficiary as a staff accountant. It requests her classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign professional with a master's degree, or a bachelor's degree followed by five years of experience, for lawful permanent resident status.

The Acting Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not establish its required ability to pay the proffered wage.

On appeal, the Petitioner submits additional evidence and asserts its ability to pay.

Upon *de novo* review, we will dismiss the appeal.

## I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer applies for 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). DOL must determine whether the United States has able, willing, qualified, and available workers for an offered position, and whether employment of a foreign national would hurt the wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL certifies a foreign national to permanently fill an offered position, an employer must next submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves a petition, a foreign national may finally 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. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must 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).[1] 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 staff accountant as $90,730 a year. On appeal, the Petitioner submits a copy of its federal income tax return for 2015. Contrary to 8 C.F.R. § 204.5(g)(2) and the instructions in the Director's request for additional evidence, however, the Petitioner does not submit required evidence of its ability to pay the proffered wage in 2016, the year of the petition's priority date.[2] Nor does the Petitioner explain the evidence's absence.[3]

The Petitioner previously submitted financial statements for 2016. As the Director found, however, these statements do not indicate that they were audited. Thus, they do not meet the requirements of 8 C.F.R. § 204.5(g)(2). Absent an annual report, federal income tax return, or audited financial statements for 2016, we cannot find that the Petitioner has the ability to pay in that year. The Petitioner therefore has not demonstrated its ability to pay from the petition's priority date onward.[4]

Also, USCIS records indicate the Petitioner's filing of two petitions for other beneficiaries that remained approved after this petition's priority date.[5] A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay the combined proffered wages of this and its other petitions that remained approved after January 11, 2016. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the filing's grant, the petitioner did not demonstrate its ability to pay combined proffered wages of multiple petitions).

In any future filings in this matter, the Petitioner must provide the proffered wages and priority dates of its other petitions. It should also provide evidence of any wages it paid to the other beneficiaries in 2016 and 2017, and notify us if a petition was withdrawn, denied, or revoked, or if a beneficiary obtained lawful permanent residence.

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[1] This petition's priority date is January 11, 2016, the date the DOL received the accompanying labor certification for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

[2] As the appeal was filed in August 2017, the Petitioner's 2016 financial information should have been available.

[3] On appeal, the Petitioner explains a delay in filing its 2015 federal tax returns but does not address the absence of the regulatory required evidence for 2016.

[4] We may also examine the totality of the Petitioner's circumstances according to *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967) when assessing ability to pay. However, in this case, the lack of required financial information from the priority date year or any time thereafter restricts our ability to perform a totality of the circumstances analysis.

[5] USCIS records identify the two other petitions by the following receipt numbers: [redacted] and [redacted]

For the foregoing reasons, the Petitioner has not demonstrated its ability to pay the proffered wage from the petition's priority date onward. We will therefore affirm the Director's decision.

## III. THE MINIMUM JOB AND CLASSIFICATION REQUIREMENTS

Although unaddressed by the Director, the Petitioner also has not established the Beneficiary's qualifications for the offered position and the requested classification.

As previously indicated, an advanced degree professional must have an "advanced degree." Section 203(b)(2)(A) of the Act. That term means "any United States academic or professional degree or a foreign equivalent degree above that of 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). A petitioner must also establish a beneficiary's possession of all DOL-certified job requirements by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

Here, the labor certification states the minimum requirements of the offered position of staff accountant as a U.S. bachelor's degree or a foreign equivalent degree in business administration or accounting, and five years of experience in the job offered.[6] On the labor certification, the Beneficiary attested to her receipt of a bachelor's degree in accounting in 1998 from a university in the Philippines. She also stated that she worked for more than 20 years as an accountant for that country's [redacted] from 1993 to 2014.

The Petitioner submitted copies of a transcript and a bachelor of science diploma in business administration with a specialization in accounting from the university listed on the labor certification. The documents, however, indicate the degree's attainment in 1988, not 1998 as listed on the labor certification. Also, the student name on the diploma and transcript does not match the Beneficiary's name on the petition and the labor certification. The record therefore does not establish the Beneficiary's possession of the requisite degree for the offered position or the requested classification. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies).

The Petitioner also submitted a letter from a human resources officer of the energy department. *See* 8 C.F.R. § 204.5(g)(1) (requiring a petitioner to support a beneficiary's claimed qualifying experience with an employer letter that includes a description of the experience). Consistent with the labor certification, the letter states the Beneficiary's employment with the government agency from 1993 to 2014.[7] The letter indicates that the Beneficiary last held the position of "Accountant III." But the letter does not state how long she worked in that position.

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[6] The labor certification also indicates the Petitioner's acceptance of a master's degree and two years of experience. The certification, however, indicates that the Beneficiary does not qualify for the offered position based on the alternate requirements.

[7] The letter also states that the Beneficiary worked for the agency on a "contractual" basis from 1984 to 1985.

A paper attached to the letter purportedly describes the job duties of the Beneficiary's last position at the [redacted] The letter, however, does not refer to the attachment, nor is the attachment on the agency's stationery or signed. Thus, the record lacks a reliable description of the Beneficiary's experience at the energy department. Therefore, contrary to the requirements of the offered position and the requested classification, the Petitioner has not established the Beneficiary's possession of at least five years of post-baccalaureate experience in the job offered.

## IV. CONCLUSION

The Petitioner has not demonstrated its ability to pay the proffered wage from the petition's priority date onward. Further, the Petitioner has not established that the Beneficiary is qualified for the offered position or requested classification.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-F- Inc.*, ID# 918577 (AAO Dec. 19, 2017)