U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10979969

Date: DEC. 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a provider of IT services, seeks to employ the Beneficiary as an associate software architect – TIS (Tech. & Infra. Svcs). It requests his classification under the third-preference, immigrant category as a skilled worker. 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" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the offered position was ineligible for classification as a skilled worker based on the Director's reading of the terms of the labor certification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

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).[1] *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the 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. *See* section 212(a)(5)(A) of the Act. 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 applies 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.

Upon review of the entire record including the evidence submitted on appeal confirming the experience requirements, we conclude that the Petitioner has established that the offered position meets the requirements for classification as a skilled worker and that the Beneficiary possesses the employment experience required on the labor certification. The Beneficiary may be classified as a

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing. *See* section 8 C.F.R. § 204.5(d).

skilled worker. Accordingly, the appeal is sustained, and the petition is approved under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

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

ORDER: The appeal is sustained.