U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-P-E- CORP

DATE: DEC. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a plastic extrusions company, seeks to employ the Beneficiary as a business management analyst. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that Beneficiary possessed the special skills required by the labor certification as of the priority date.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary's college studies, senior project, and prior employment as a financial administrator provided him with the required special skills.

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 obtains an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). 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)(i)(I)-(II) 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

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is June 20, 2017. *See* 8 C.F.R. § 204.5(d).

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.

II. THE BENEFICIARY'S EXPERIENCE

The Director denied the petition because the Petitioner did not establish that the Beneficiary possessed the special skills required by the labor certification as of the priority date.

A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires a bachelor's degree in business administration and 12 months of experience in the job offered. At Part H.14., the labor certification states the following special skills requirements: "Requires relevant curriculum orientation in economics, marketing, finance, accounting, and utilization of technology resources, including financial & managerial accounting and project management/systems analysis. Minimum of one year experience in leadership position in finance department of materials utilization company."

The labor certification also states that the Beneficiary qualifies for the offered position based on experience as a financial administrator with [redacted] in [redacted] Illinois, from April 1, 2007, to February 1, 2009.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3).

The record contains an experience letter dated August 1, 2016, from [redacted], HR Manager at [redacted] stating that the Beneficiary "was hired in March 2004 as a Billing Administrator... [the Beneficiary] also held other jobs throughout his tenure. When he left in February 2009 he was a Financial Administrator. He served as a Financial Administrator for close to 2 years."

In a request for evidence, the Director requested evidence verifying that the Beneficiary had the special skills listed at Part H.14. of the labor certification. In its response, the Petitioner submitted the Beneficiary's college transcripts, a copy of the August 1, 2016, letter from [redacted] and a certificate issued to the Beneficiary by [redacted] of Technology for his contributions to a senior project in 2002.

In his decision, the Director determined that the evidence did not establish that the Beneficiary possessed the special skills required by the labor certification. The Director also noted that the record did not contain a copy of the Beneficiary's college diploma.

On appeal, the Petitioner provides a copy of the Beneficiary's Bachelor of Science in Business Administration issued by in October 2003, and evidence relating to the Beneficiary's senior project at The Petitioner asserts that the Beneficiary's college courses and senior project provided him with the "relevant curriculum orientation in economics, marketing, finance, accounting, and utilization of technology resources, including financial & managerial accounting and project management/systems analysis" required by the labor certification. We agree. However, the record does not establish that the Beneficiary had a minimum of one year experience in a leadership position in a finance department of a materials utilization company as required by Part H.14. of the labor certification.

On appeal, the Petitioner states that the August 1, 2016, letter from clearly confirms that his position was a leadership position. It cites Webster's Dictionary and claims that an administrator "would be directing the various activities encompassed within the department for which they are the administrator." Thus, the Petitioner concludes that the Beneficiary was in a leadership position within the finance department. We disagree. The letter from confirms that the Beneficiary served as a financial administrator for close to two years, but it does not list any duties of the Beneficiary as a financial administrator. It does not indicate that the Beneficiary was in a leadership position within the finance department. It also does not indicate that is a materials utilization company. The record contains no other evidence relating to the Beneficiary's prior employment in a finance department of a materials utilization company. Thus, the Petitioner has not established that the Beneficiary had a minimum of one year experience in a leadership position in a finance department of a materials utilization company as required by Part H.14. of the labor certification.

Further, although not addressed by the Director, the record does not establish that the Beneficiary had 12 months of experience in the job offered of business management analyst. The letter from confirms that the Beneficiary worked as a billing administrator for an unknown amount of time, and as a financial administrator for close to two years. However, it does not indicate that the Beneficiary worked as a business management analyst for at least 12 months. The letter does not specifically describe the Beneficiary's duties at as required by 8 C.F.R. § 204.5(l)(3). Thus, the Petitioner has not established that the Beneficiary meets the primary experience requirement of the labor certification with 12 months of experience as business management analyst.

In sum, the Petitioner has not established that the Beneficiary possessed the special skills and experience required by the labor certification as of the priority date.

III. ABILITY TO PAY THE PROFFERED WAGE

Although not addressed by the Director, the record does not establish the Petitioner's continuing ability to pay the proffered wage from the priority date. The proffered wage is $64,000 per year. The record must show the Petitioner's ability to pay the proffered wage from the priority date of June 20, 2017, onward.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The record does not contain an annual report, federal tax return, or audited financial statements for the Petitioner as of the priority date in 2017 as required by 8 C.F.R. § 204.5(g)(2).[2] Thus, the Petitioner has not established its continuing ability to pay the proffered wage from the petition's priority date onward.

IV. CONCLUSION

The Petitioner has not established that the Beneficiary possessed the special skills and experience required by the labor certification as of the priority date. The Petitioner has not established its continuing ability to pay the proffered wage from the priority date.

ORDER: The appeal is dismissed.

Cite as *Matter of P-P-E- Corp*, ID# 2226492 (AAO Dec. 27, 2018)

[2] The record contains the Petitioner's federal income tax return for calendar year 2016.