U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06267218

DATE: DEC. 30, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a restaurant, seeks to employ the Beneficiary as a chef Italian cuisine. It requests skilled worker classification for the Beneficiary 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 Nebraska Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage from the priority date onward.

On appeal the Petitioner submits a brief and additional documentation and asserts that the evidence of record establishes its ability to pay the proffered wage.

The records of U.S. Citizenship and Immigration Services (USCIS) show that the Petitioner filed a second Form I-140 petition (receipt number [redacted]) on behalf of the Beneficiary while the instant petition was on appeal. The second I-140 petition was accompanied by the same labor certification that originally accompanied the instant petition. The second I-140 petition was approved by the Nebraska Service Center. Thus, USCIS has approved an immigrant visa petition for the same job and classification sought in the initial petition and based on the same labor certification. The appeal currently before us is moot, therefore, and as such will be dismissed.

ORDER: The appeal is dismissed as moot.