U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C&D E-, INC.

DATE: FEB. 14, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a marble, granite, and tile business, seeks to employ the Beneficiary as a stone polisher. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification of skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent residence to work in a position that requires at least 2 years of training or experience.

The Petitioner filed a Form I-140, Immigrant Petition for Alien Worker, accompanied by a labor certification approved by the Department of Labor. The Director, Texas Service Center, denied the petition. The Director determined that the Petitioner did not establish its ability to pay the proffered wage of the job offered from the priority date of the petition up to the present.

The matter is now before us on appeal. The Petitioner submits additional documentation that addresses the issue of its ability to pay the proffered wage. Upon *de novo* review, we will sustain the appeal.

To be eligible for approval, a petitioner must establish its continuing ability to pay the proffered wage of the job offered from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2). In addition, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977). The priority date of the instant petition is April 30, 2001, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Upon review of the entire record, we conclude that the Petitioner has established that it more likely than not has had the continuing ability to pay the proffered wage from the priority date up to the present. Thus, the Petitioner has overcome the ground for denial in the Director's decision. We also find that the Beneficiary more likely than not had all the education, training, and experience specified on the labor certification as of the priority date, and that his experience makes him eligible for classification as a skilled worker. Accordingly, the petition will be approved under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), for classification of the Beneficiary as a skilled worker.

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

ORDER: The appeal is sustained.

Cite as *Matter of C&D E-, Inc.*, ID# 77471 (AAO Feb. 14, 2017)