U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-T-A-F-, INC.

DATE: FEB. 16, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an oil and gas equipment supply company, seeks to employ the beneficiary as vice president of international business development. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* 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, Texas Service Center, initially approved the petition, but subsequently revoked the approval on two grounds. The Director concluded that the Petitioner did not establish that there was a *bona fide* job offer open to U.S. workers or that the Beneficiary met the educational requirement stated on the ETA Form 9089, Application for Permanent Employment Certification (labor certification).

The matter is now before us on appeal. The Petitioner submits a brief and additional evidence, claiming that a *bona fide* job offer did exist, despite a prior relationship between the Petitioner and the Beneficiary, and that the Beneficiary had the requisite education to qualify for the job offered under the terms of the labor certification.

Upon *de novo* review, we will withdraw the Director's decision and remand the case to the Director for further consideration and the issuance of a new decision.

I. DISCUSSION

The first issue to consider is whether the proffered position was a *bona fide* job opportunity. The regulation at 8 C.F.R. § 204.5(c) provides that "[a]ny United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act." Under 20 C.F.R. § 626.20(c)(8) and § 656.3, a petitioner must demonstrate that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See also* 20 C.F.R. § 656.17(l); *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). Upon review of the entire record, including all of the documentation submitted on appeal, we find that the Petitioner has established by a preponderance of the evidence

that the job offered, vice president of international business development, was a *bona fide* job opportunity open to U.S. workers.

Next, we consider whether the Beneficiary has the education required for the offered job under the terms of the labor certification. Section 203(b)(3)(A)(ii) of the Act provides that classification as a "professional" may be granted to "[q]ualified immigrants who hold baccalaureate degrees and who are members of the professions." *See also* 8 C.F.R. § 204.5(l)(2). Moreover, to be eligible for the requested classification a beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158,159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Upon review of the entire record, including all of the documentation submitted on appeal, we find that the Petitioner has established by a preponderance of the evidence that the Beneficiary meets the minimum educational requirement of the labor certification to qualify for the job offered.

Although, the Petitioner has overcome the above stated grounds for revocation, the petition is not approvable. To be eligible for approval, the Petitioner must also establish its continuing ability to pay the proffered wage of the job offered from the priority date of the petition up to the present. *See* 8 C.F.R. § 204.5(g)(2). The priority date of the petition is the date the underlying labor certification was accepted for processing by the Department of Labor. *See* 8 C.F.R. § 204.5(g)(2). The priority date in this case is April 14, 2010.

During our consideration of the appeal we advised the Petitioner that it must establish its continuing ability to pay the proffered wage, which in this case is $99,500. We requested additional evidence for the years 2015 and 2016 to supplement previously submitted documentation for earlier years. The requested documentation was submitted by the Petitioner, but did not demonstrate its continuing ability to pay the proffered wage from the priority date up to the present.

II. CONCLUSION

For the reasons noted above, we will withdraw the Director's decision to revoke the petition's approval. However, because the record does not establish the Petitioner's continuing ability to pay the proffered wage from the priority date up to the present, we will remand the case to the Director to consider this and any other issue(s) that may be deemed pertinent.

ORDER: The decision of the Director, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-T-A-F-, Inc.*, ID# 8465 (AAO Feb. 16, 2017)