U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-, INC.

DATE: FEB. 21, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an information technology business, seeks to employ the Beneficiary as a foreign legal consultant. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification *See* Immigration and Nationality Act (the Act), section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition, finding that the Petitioner had not established its ability to pay the Beneficiary the proffered wage.

The matter is before us on appeal. The Petitioner asserts that the record does establish its ability to pay the proffered wage and that the Director miscalculated its proffered wage obligation in this matter by basing it on a 40-hour work week rather than the 35-hour work week required for the offered position.

Upon *de novo* review, we will sustain the appeal.

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.

A petitioner must establish that its job offer to a beneficiary is realistic as of a visa petition's priority date and that this offer remains realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, U.S.

Citizenship and Immigration Services requires a petitioner to demonstrate financial resources sufficient to pay the beneficiary the proffered wage throughout the relevant period, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

Upon review of the record in this matter, we find the Petitioner to have demonstrated that the offered position entails a 35-hour work week. The record on appeal contains a copy of the Form 9141, Application for Prevailing Wage Determination, that the Petitioner filed with the U.S. Department of Labor with respect to the offered position, which reflects that the number of hours to be worked each week is 35. Based on that evidence and the other documentation in the record before us, the record establishes the Petitioner's ability to pay from the priority date onward. Accordingly, the appeal will be sustained and the Director's denial of the petition will be withdrawn. The visa petition will be approved.

ORDER: The appeal is sustained.

Cite as *Matter of C-M-, Inc.*, ID# 90486 (AAO Feb. 21, 2017)