U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-K-B-C-

DATE: FEB. 22, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a church, seeks to employ the Beneficiary as a senior pastor. It requests his classification as a member of the professions holding an advanced degree under the second preference immigration category. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This category allows a U.S. employer to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition, concluding that the record did not establish the Petitioner's ability to pay the proffered wage. On appeal, we affirmed the Director's decision. We also found that the record did not establish the Beneficiary's possession of the minimum education required for the offered position and the requested classification.[1]

The matter is now before us on motion to reopen and motion to reconsider. On motion, the Petitioner asserts that we misinterpreted evidence of record. It also submits additional materials in support of its ability to pay the proffered wage and the Beneficiary's educational qualifications.

Upon review, we will deny the motion to reconsider. We will grant the motion to reopen in part and deny it in part.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decisions to establish that the decision

[1] *See Matter of C-K-B-C-*, ID# 17235 (AAO July 8, 2016).

was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

A. Motion to Reconsider

The Petitioner has not cited any legal authority to challenge our prior decision. The Petitioner therefore has not shown proper cause for reconsideration.

B. Motion to Reopen

For the reasons discussed below, the Petitioner's new evidence on motion establishes the Beneficiary's educational qualifications for the offered position and the requested classification, but does not demonstrate the Petitioner's ability to pay. We will therefore grant the motion to reopen in part and deny it in part.

1. The Beneficiary's Possession of the Minimum Required Education

An advanced degree professional must possess an advanced degree or its equivalent. Section 203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k)(3)(i). The term "advanced degree" means "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.'" 8 C.F.R. § 204.5(k)(2).

A petitioner must also establish a beneficiary's possession of all the education, training, and experience specified on an accompanying ETA Form 9089, Application for Permanent Employment Certification (labor certification), by a petition's priority date. 8 C.F.R. § 103.2(b)(l), (12); *see also 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).

Here, the petition's priority date is May 16, 2013, and the labor certification states the minimum requirements of the offered position of senior pastor as a U.S. master's degree in divinity or theology.[2] The labor certification states that the position requires no training or experience.

The Beneficiary attested on the labor certification to his receipt of a master of divinity degree from [redacted] South Korea, in 1994. The Petitioner submitted copies of a certificate of graduation and a transcript from the university. The documents

[2] The petition's priority date is the date the U.S. Department of Labor (DOL) received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

indicate the university's issuance of a master of divinity degree in theology to the Beneficiary on February 18, 1994, after his completion of a 3-year program.

The Petitioner also submitted an evaluation of the Beneficiary's foreign educational credentials. The evaluation concludes that the Beneficiary's South Korean degree equates to a U.S. master of divinity degree.

In our appellate decision, we found that the record did not establish the Beneficiary's possession of the minimum education required for the offered position or the requested classification. The website of an association of South Korean universities indicated the accreditation of [redacted] in 2005. Because the Beneficiary graduated from the school in 1994, we found that the record did not establish the university's accreditation at the time of the Beneficiary's graduation. Because accredited institutions must issue U.S. advanced degrees, we reasoned that accredited schools must also issue foreign advanced degrees.

On motion, the Petitioner establishes the university's accreditation at the time of the Beneficiary's graduation. The record indicates that the 2005 date on the website referred to the year in which South Korean education officials granted the university a recent period of accreditation. The Petitioner submits evidence of the university's continuous accreditation since its founding in 1954 and since the establishment of its graduate school in 1980.

The record establishes the Beneficiary's possession of the minimum education required for the offered position and the requested classification. We will therefore grant the Petitioner's motion to reopen in part and withdraw our prior finding regarding the Beneficiary's education.

2. The Petitioner's Ability to Pay the Proffered Wage

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In this case, the labor certification states the proffered wage of the offered position of senior pastor as $31,699 per year. As previously indicated, the petition's priority date is May 16, 2013.

In our appellate decision, we found that the Petitioner did not support its ability to pay with evidence required by 8 C.F.R. § 204.5(g)(2). On motion, however, the Petitioner submits copies of its IRS Forms 990-EZ, Short Form Returns of Organization Exempt From Income Tax, for 2013, 2014, and 2015. Because federal tax returns are one of the acceptable forms of evidence under 8 C.F.R.

§ 204.5(g)(2), we may reconsider whether the record establishes the Petitioner's ability to pay the proffered wage.[3]

In determining ability to pay, we first examine whether a petitioner paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not pay a beneficiary the full proffered wage each year, we next examine whether it generated sufficient annual amounts of net income or net current assets to pay any differences between the proffered wage and the wages paid. If a petitioner's net income and net current assets are insufficient, we may also consider the overall magnitude of its activities. *See Matter of Sonegawa,* 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).[4]

The record contains copies of monthly checks that the Petitioner issued to the Beneficiary from May 2013 through September 2015. For most months, the Petitioner issued two checks: one for "compensation" and one for "housing allowance."

The compensation checks from May 2013 through September 2015 indicate that the Petitioner paid the Beneficiary $20,000 in 2013, $28,500 in 2014, and $21,750 in 2015. The housing checks for the same period indicate that the Petitioner paid the Beneficiary additional amounts of $13,200 in 2013, $19,950 in 2014, and $15,750 in 2015.[5]

The annual amounts of the compensation checks do not meet the annual proffered wage of $31,699 in 2013, 2014, or 2015. But the combined annual amounts of the compensation and housing checks exceed the proffered wage in all relevant years. If we consider the housing checks as evidence, therefore, the record appears to demonstrate the Petitioner's ability to pay. However, in our appellate decision, we rejected the housing checks, finding that the Petitioner's reliance on its housing payments to the Beneficiary conflicted with an attestation it made on the labor certification. The Petitioner certified that the proffered wage "is not based on commissions, bonuses or other incentives, unless the employer guarantees a prevailing wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage." 20 C.F.R. § 656.10(c)(2) (requiring a labor certification employer to so certify).

As the Petitioner contends on motion, however, the record does not support a finding that the housing payments constitute "commissions, bonuses or other incentives." Rather, the record

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[3] At the time of the motion's filing, required evidence of the Petitioner's ability to pay in 2016 was not yet available. We will therefore consider the Petitioner's ability to pay only through 2015.

[4] Federal courts have upheld our method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Estrada-Hernandez v. Holder*, 108 F. Supp. 3d 936, 942-43 (S.D. Cal. 2015); *Rivzi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, 627 Fed. App'x. 292 (5th Cir. 2015); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873, 881 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. Nov. 10, 2011).

[5] The record lacks copies of five of the monthly housing allowance checks referenced by the Petitioner for the 29-month period. The compensation and housing checks for July 2013 through January 2014 and for September 2015 indicate that they were deposited. The record does not establish that the other checks were deposited.

indicates that the monthly payments are a regular part of the Beneficiary's compensation package, with their amounts unrelated to his job performance.

Nevertheless, the Petitioner does not persuade us that its housing payments support its ability to pay the Beneficiary's proffered wage. Because the DOL considers fringe benefits like housing allowances when determining prevailing wage rates for job opportunities, labor certification employers may include the value of their benefits to demonstrate their abilities to pay proffered wages. *Matter of Kids "R" Us*, 1989-INA-311, 1991 WL 120095, *4 (BALCA Jan. 28, 1991) (*en banc*). But an employer "bears a heavy burden to demonstrate . . . the fairness and *bona fides* of its proposal." *Id.* An employer "must establish the value of its fringe benefits and show that its fringe benefits are not common to the comparable jobs upon which the prevailing wage rate is based." *Id.* (citation omitted).

Here, the Petitioner has not shown that DOL audited and considered this issue and determined that the benefits are not common and not already included in the wage calculation. Rather, on motion, the Petitioner states the opposite; it states that a housing allowance "is a normal practice of the trade that churches provide to ministers/pastors in compliance with what is allowed by the IRS [Internal Revenue Service]." If the comparable jobs used to determine the prevailing wage of the offered position included similar housing benefits, the record would not demonstrate the Petitioner's housing payments should be included as evidence of its ability to pay the proffered wage. Therefore, we will not consider the housing payments as evidence of the Petitioner's ability to pay.[6]

Beyond the issue of housing payments, the evidence submitted contains numerous inconsistencies regarding the wages paid to the Beneficiary in the years in question. On motion, the Petitioner submits copies of IRS Forms W-2, Wage and Tax Statements, for 2013, 2014, and 2015. The Forms W-2 indicate that the Petitioner paid the Beneficiary $32,000 in 2013, $36,000 in 2014, and $33,000 in 2015.

The amounts on the Forms W-2 appear to exceed the annual proffered wage of $31,699. However, the wage amounts listed on the forms are unreliable. The Forms W-2 for 2014 and 2015 state that they are "corrected" wage and tax statements, containing amended wage amounts to the Beneficiary. The Petitioner previously submitted Forms W-2 indicating that it paid the Beneficiary $30,000 in 2014 and $24,000 in 2015, amounts below the annual proffered wage. A petitioner must resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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[6] Labor certification employers must also state housing benefits in certain advertisements for job opportunities. *See* 20 C.F.R. § 656.17(f)(7) (barring print ads from containing terms and conditions of employment less favorable than those offered to a foreign national); *see also Matter of Needham-Betz Thoroughbreds, Inc.*, 2011-PER-02104, 2014 WL 7526194 (BALCA Dec. 31, 2014), *en banc review denied*, 2015 WL 1388633 (BALCA Mar. 20, 2015) (affirming a labor certification denial where ads for the position omitted an option for rent-free housing at the job site). In this case, the record does not include copies of the Petitioner's ads for the offered position. We express no opinion on the adequacy of the Petitioner's recruitment efforts.

The Petitioner states that it amended the Forms W-2 "to adjust the label or designation of funds previously received" from it by the Beneficiary. The Petitioner asserts that it paid the Beneficiary more than $50,000 per year in 2013, 2014, and 2015, in a combination of wages, housing allowances, and other benefits. As a non-profit, tax-exempt organization, the Petitioner contends that "the labels placed upon monies paid [to the Beneficiary] are not relevant." Unlike a for-profit corporation, the Petitioner asserts that it "does not benefit in any significant way if the monies paid [to the Beneficiary] are called wages, housing allowance, expenses or anything else. The bottom line is money was paid out to the beneficiary." Contrary to the Petitioner's contention, however, the types of the Petitioner's payments to the Beneficiary affect the determination of its ability to pay. For the reasons previously discussed, we will not consider the Petitioner's housing payments as evidence of its ability to pay. The record does not establish whether the amounts on the newly submitted Forms W-2 include payments for compensation, housing, and/or other benefits. To establish its ability to pay, the Petitioner must provide accurate and consistent information identifying the types of payments to the Beneficiary. *See* section 291 of the Act, 8 U.S.C. § 1361 (placing the burden of proof on a petitioner).

Also, the amounts on the newly submitted Forms W-2 conflict with other evidence of record. The Forms W-2, compensation checks, and federal tax returns show varying amounts of wages paid in each of the relevant years. The Petitioner must resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. The following table highlights the inconsistencies.

Wages Paid:	Compensation Checks	Forms W-2	"Corrected" Forms W-2	Petitioner's Tax Returns[7]	Beneficiary's Tax Returns
2013	$20,000	$32,000	Not submitted	$30,000	$30,000
2014	$28,500	$30,000	$36,000	$36,000	$30,000
2015	$21,750[8]	$24,000	$33,000	$33,000	Not submitted

Given the discrepancies noted above, we find that neither the Forms W-2 nor the tax returns submitted on motion establish the Petitioner's ability to pay the proffered wage based on its payments to the Beneficiary. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies).

[7] The amounts on the Petitioner's tax returns include annual housing payments of $19,700 in 2013 and 2014, and $20,650 in 2015. As previously discussed, we will not consider housing payments as evidence of the Petitioner's ability to pay the proffered wage. Also, the housing payments reported on the tax returns vary from the amounts reflected in the housing checks for each relevant year. The Petitioner's 2013 tax return also reflects the Beneficiary's receipt of $16,933 in "[h]ealth benefits, contributions to employee benefit plans, and deferred compensation." Because the Petitioner has not demonstrated the *bona fides* and fairness of including these fringe benefits under *Kids "R" Us*, however, we will not consider the value of the reported 2013 benefits in determining the Petitioner's ability to pay.

[8] The 2015 compensation checks to the Beneficiary total $21,750 through September, with no monthly check exceeding $2500. The Beneficiary would have had to receive an additional $11,250 in the final quarter of 2015, or $3750 per month, to reach the $33,000 amount on the amended Form W-2 for 2015. The record does not support the Beneficiary's receipt of increased monthly compensation payments during the final quarter of 2015.

Rather, we find the compensation checks from May 2013 through September 2015 to be the most reliable evidence of the Petitioner's payments to the Beneficiary. As such, we will use the amounts from the compensation checks to analyze the Petitioner's ability to pay.

In our appellate decision, we found that the 2013 payment of $20,000 indicated by the compensation checks did not equal or exceed the annual proffered wage of $31,699. As the Petitioner contends on motion, however, it need only demonstrate its ability to pay the proffered wage in 2013 from the petition's priority date of May 16. Because the compensation checks show the Petitioner's 2013 payments to the Beneficiary after the priority date, we may prorate the proffered wage that year for the 7.5-month period from May 16 to the end of the year. Thus, the Petitioner need only demonstrate its ability to pay $19,811.87 in 2013.

The compensation checks indicate that the Petitioner paid the Beneficiary $18,750 after the petition's priority date in 2013. This amount is less than the prorated proffered wage of $19,811.87 for that year. The record therefore does not establish the Petitioner's ability to pay the prorated proffered wage in 2013 based on its payments to the Beneficiary.

On motion, the Petitioner asserts that the compensation checks demonstrate its payment of $20,000 to the Beneficiary after the petition's priority date in 2013. However, because the priority date is May 16, 2013, only about half of the Petitioner's $2500 monthly compensation payment to the Beneficiary for May 2013 occurred after the priority date. The record therefore indicates the Petitioner's payment of about $18,750 in 2013 after the petition's priority date, not $20,000 as asserted by the Petitioner.

Moreover, the compensation checks indicate that the Petitioner's payments to the Beneficiary of $28,500 in 2014 and $21,750 in 2015 do not equal or exceed the annual proffered wage of $31,699. Therefore, the record does not establish the Petitioner's ability to pay the proffered wage based on its payments to the Beneficiary.

Nevertheless, we credit the Petitioner's documented payments. It need only demonstrate sufficient amounts of net income or net current assets to pay the differences between the annual proffered wage and the actual wages paid, or $11,699 in 2013, $3199 in 2014, and $9949 in 2015.

As previously indicated, the Petitioner is a nonprofit organization. Consideration of net income is therefore inapplicable to it. Its tax returns contain balance sheets with information about its annual assets and liabilities. But the tax returns do not distinguish current assets and liabilities from long-term assets and liabilities. Because we are unable to accurately calculate the Petitioner's net current assets for 2013, 2014, and 2015, the record does not establish the Petitioner's ability to pay the proffered based on its net current assets.

On motion, the Petitioner asserts that its tax returns reflect annual net current asset amounts of $18,311 in 2013, $22,302 in 2014, and $22,302 in 2015. Because these amounts exceed the differences between the annual proffered wage and the wages paid in all relevant years, the

Petitioner asserts that the tax returns demonstrate its ability to pay the proffered wage. But, rather than net current asset amounts, the Petitioner cites "net asset" amounts.[9] Unlike net assets, which represent the difference between all assets and liabilities, net current assets represent the difference between only current assets and liabilities. Joel G. Siegel & Jae K. Shim, *Barron's Dictionary of Accounting Terms* 117 (3d ed. 2000). Current assets include holdings that can be liquidated within 1 year, such as cash, marketable securities, and inventory. *Id.* Current liabilities, on the other hand, include obligations payable within 1 year, such as accounts payable and short-term notes. *Id.* at 118.

As previously indicated, we may also consider a petitioner's ability to pay a proffered wage beyond its net income and net current assets. Under *Sonegawa*, we may consider such factors as: the number of years a petitioner has conducted business; its number of employees; its growth; the occurrence of uncharacteristic expenses or losses; its reputation in its field; a beneficiary's replacement of a current employee or outsourced service; or other evidence of its ability to pay.

In this case, the record indicates the Petitioner's continuous operations since 1994. In an affidavit, the chairman of the Petitioner's hiring committee states that the church's membership has grown since its founding from a few to about 120. On the Form I-140 and labor certification, the Petitioner stated its employment of only the Beneficiary. On motion, however, the Petitioner submits evidence of its recent employment of two additional workers.

However, unlike the petitioner in *Sonegawa*, whose tax returns established its ability to pay the proffered wage in all but 1 year of a 10-year period, the Petitioner's financial documentation does not establish its ability to pay in any of 3 years from the petition's priority date. Also unlike in *Sonegawa*, the record does indicate the Petitioner's incurrence of uncharacteristic losses or expenses, or its possession of an outstanding reputation in its field. In addition, the record does not indicate the Beneficiary's replacement of a current employee or outsourced service.

On motion, the Petitioner asserts that funds budgeted for other purposes could pay the Beneficiary's proffered wage. It also contends that its congregation would contribute more funds to pay the Beneficiary's proffered wage. The Petitioner states: "As Senior Minister, the Beneficiary . . . is indispensable to the church and the members have the ability, desire and resolve to always pay him." The record, however, lacks documentary evidence of additional funds available to pay the proffered wage. The Petitioner's tax returns also indicate that its annual contributions have decreased from 2013 to 2015. Thus, the totality of the circumstances under Sonegawa does not establish the Petitioner's ability to pay the proffered wage.

The record does not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward. We will therefore affirm our appellate decision and deny the Petitioner's motion to reopen in this regard.

[9] The net asset amount stated on the Petitioner's 2015 tax return is $18,314, not $22,302 as the Petitioner states.

C. Misrepresentation on the Labor Certification

Although unaddressed in our appellate decision, the record also does not establish the validity of the accompanying labor certification.

A petition for an advanced degree professional must be accompanied by a valid individual labor certification, an application for Schedule A designation, or documentation of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). We may invalidate a labor certification after its issuance upon a finding of "fraud or willful misrepresentation of a material fact involving the labor certification application." 20 C.F.R. § 656.30(d).

In this case, the Petitioner responded "No" to Question C.9 on the labor certification, which asks: "Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?" The Petitioner also attested on the labor certification that "[t]he job opportunity has been and is clearly open to any U.S. worker." *See* 20 C.F.R. § 656.10(c)(8) (requiring a labor certification employer to so certify).

Evidence of record, however, suggests that the labor certification misrepresents the relationship between the Petitioner and the Beneficiary, and the clear availability of the job opportunity to U.S. workers.

Online government records identify the Beneficiary and his spouse as corporate officers of the Petitioner since 2011, before the labor certification's filing. *See* Haw. Dep't of Commerce & Consumer Affairs, Bus. Registration Search, at http://hbe.ehawaii.gov/documents/search.html (accessed Feb. 2, 2017). The name of the Petitioner's president/director in the records matches the name of the Beneficiary. *Id.* Also, the name of the Petitioner's secretary/director in the records matches the name of the Beneficiary's spouse. *Id.*

The Petitioner's federal income tax returns for 2013, 2014, and 2015 also identify the Beneficiary and his spouse as corporate officers of the Petitioner. As in the online government records, the name of the Petitioner's president/director on the tax returns matches the Beneficiary's name, and the name of the Petitioner's secretary/director matches the name of the Beneficiary's spouse.

The record also indicates that the Beneficiary signed license and lease agreements on behalf of the Petitioner. The agreements identify the Beneficiary as the Petitioner's senior pastor. But the Beneficiary's signatures on behalf of the church suggest an executive role within the organization. Thus, the Petitioner's response to question C.9 on the labor certification appears to conceal the Beneficiary's position as a corporate officer and his familial relationship to another corporate officer, his spouse.

The record also suggests that the Petitioner misrepresented the clear availability of the job opportunity to U.S. workers on the labor certification. In determining the *bona fides* of a job

opportunity, we must consider several factors, including whether the foreign national: is in a position to control or influence hiring decisions regarding the offered position; is related to the employer's owners, officers, or employees; incorporated or founded the employer; has an ownership interest in it; is involved in its management; is on its board of directors; is one of a small number of employees; possesses specialized or unusual job requirements of the offered position; or has personal attributes that, in the foreign national's absence, would likely cause the employer to cease operations. *Matter of Modular Container Sys., Inc.*, 89-INA-228, 1991 WL 223955, *8 (BALCA 1991) (*en banc*). We must also consider the employer's level of compliance and good faith in processing the labor certification. *Id.*

Here, evidence suggests that the Beneficiary is a corporate officer of the Petitioner and has a familial relationship with another officer. The record also suggests that the Beneficiary and his spouse sit on the Petitioner's board of directors and that the Beneficiary is one of a small group of employees. Thus, multiple *Modular Container* factors suggest that the offered position of senior pastor is not clearly available to U.S. workers and that the Petitioner misrepresented the *bona fides* of the job opportunity on the labor certification.

Because we did not previously notify the Petitioner of these concerns and afford it an opportunity to respond, this decision will not address the validity of the labor certification. In any future filings in this matter, however, the Petitioner should submit additional evidence to establish the labor certification's validity and the *bona fides* of the job opportunity.

III. CONCLUSION

Because the Petitioner's motion to reconsider did not cite any legal authority challenging our prior decision, we will deny the motion. Newly submitted evidence, however, establishes the Beneficiary's possession of the minimum education required for the offered position and the requested classification. We will therefore withdraw our contrary finding and grant the Petitioner's motion to reopen in this regard. But the record on motion does not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward. We will therefore affirm our appellate decision and deny the motion to reopen in this respect.

In visa petition proceedings, a petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner did not meet that burden.

ORDER: The motion to reopen is granted in part and denied in part.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-K-B-C-*, ID# 102230 (AAO Feb. 22, 2017)