U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-T-, INC.

DATE: FEB. 28, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a software consulting and development company, seeks to employ the beneficiary as a senior software engineer. 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 Petitioner filed a Form I-140, Immigrant Petition for Alien Worker, accompanied by a labor certification, ETA Form 9089, certified by the Department of Labor (DOL). The Director, Texas Service Center, denied the petition on the ground that the Beneficiary did not meet the educational requirement of the labor certification.

The matter is now before us on appeal. Upon *de novo* review, we will sustain the appeal.

To be eligible for approval, 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 petitioner must also 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). The priority date of the instant petition is June 30, 2015, 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 the Beneficiary had all the education, training, and experience specified on the ETA Form 9089 as of the priority date, and that her education and experience make her eligible for classification as an advanced degree professional. We also determine 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. Accordingly, the petition will be approved under section 203(b)(2) of the Act for classification of the Beneficiary as an advanced degree professional.

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 E-T-, Inc.*, ID# 73737 (AAO Feb. 28, 2017)