U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-H-S-, LLC

DATE: JAN. 12, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a provider of programs in health, wellness, and chronic care, seeks to employ the Beneficiary as a "Senior .NET Developer." 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, Nebraska Service Center, denied the petition. The Director found that the Petitioner did not establish its continuing ability to pay the proffered wage of the Beneficiary, as well as the proffered wages of all its other beneficiaries of pending I-140 petitions, from their respective priority dates up to the present.

The matter is now before us on appeal. The Petitioner has submitted a brief and additional documentation in support of the appeal, but has not responded to a request for evidence (RFE) issued by this office.

Upon *de novo* review, we will summarily dismiss the appeal.

The Form I-140, Immigrant Petition for Alien Worker, was filed on March 30, 2015. The petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was filed with the Department of Labor (DOL) on July 30, 2014, and certified by the DOL on December 30, 2014. The labor certification states that the proffered wage of the job offered is $111,010 to $115,000 per year, and that the Beneficiary has been employed by the Petitioner as a senior developer analyst .NET since September 30, 2013 (labor certification, boxes G and K.a).

On October 2, 2015, the Director denied the petition on the grounds that the evidence of record did not establish the Petitioner's continuing ability to pay the proffered wages of the Beneficiary as well as all of its other I-140 beneficiaries from their priority dates onward. The Petitioner filed its appeal on November 4, 2015, which was supplemented by a brief and additional documentation, which it claimed established that it was able to pay the Beneficiary the proffered wage.

On August 16, 2016, we sent an RFE to the Petitioner highlighting the fact that the financial information in the record pertained to the Petitioner's parent company rather than the Petitioner itself. We noted that the Petitioner and parent company are each distinct legal entities with different Federal Employer Identification Numbers, and that as such, the documentation in the record did not meet the requirements of 8 C.F.R. § 204.5(g). We also invited the Petitioner to supplement the partial pay records for the instant Beneficiary in 2015 and requested the submission of his Form W-2 for 2015. We advised the Petitioner that it had 87 days to file a response to the RFE.

The response period for the RFE expired on November 14, 2016, without a reply from the Petitioner. We have received no further communication from the Petitioner up to the date of this decision.

If a petitioner does not respond to a request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13). Since the Petitioner has not responded to the RFE of August 16, 2016, the petition is deniable under the regulatory provision cited above.

ORDER: The appeal is summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of A-H-S-. LLC.*, ID# 90937 (AAO Jan. 12, 2017)