U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-O-A- INC.

DATE: JAN. 31, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, which describes itself as a medical equipment distributor, seeks to employ the Beneficiary as a solutions architect. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least 2 years of training or experience.

The Director, Texas Service Center, denied the petition after concluding that the Petitioner had not established its ability to pay the proffered wage as of the priority date. On July 8, 2016, we affirmed the Director's decision and dismissed the appeal. The matter is now before us on motion to reopen and motion to reconsider. The Petitioner submits new evidence relating to its ability to pay the Beneficiary's proffered wage and asserts that the totality of the evidence establishes its ability to pay the proffered wage. Upon *de novo* review, we will grant the motion to reopen and sustain the appeal.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The current motion to reopen qualifies for consideration because the Petitioner is providing new facts with supporting documentation not previously submitted.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states:

> If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. 8 C.F.R. § 204.5(g)(2).

Upon review of the entire record including the evidence submitted on appeal and on motion, we conclude that the Petitioner has established that it is more likely than not that it had the ability to pay the proffered wage as of the December 16, 2011, priority date. We also conclude that the Beneficiary meets the requirements for classification as a skilled worker and possesses the educational credentials and employment experience required on the labor certification. The Beneficiary may be classified as a skilled worker. Accordingly, the motion to reopen is granted, the appeal is sustained, and the petition is approved under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has met that burden.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of T-O-A- Inc.*, ID# 105237 (AAO Jan. 31, 2017)