U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-L- INC.

DATE: JULY 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a logistics company, seeks to employ the Beneficiary as a bookkeeper. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" 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 two years of training or experience.

The Director of the Nebraska Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage from the priority date of the petition onward,[1] as required by the regulation at 8 C.F.R. § 204.5(g)(2). On appeal the Petitioner submits a copy of its federal income tax return for 2018, the year of the priority date, which shows that the Petitioner's net income exceeded the proffered wage of the bookkeeper position that year. Based on this evidence we find that the Petitioner has established its ability to pay the proffered wage from the priority date onward. Accordingly, we will withdraw the Director's decision to the contrary.

Upon *de novo* review of the petition, however, we will remand this case to the Director for further consideration of whether the Beneficiary meets the educational and experience requirements of the labor certification, and for the issuance of a new decision by the Director.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S.

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). In this case the priority date is February 16, 2018.

Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A beneficiary must meet the specific educational, training, experience, or other requirements of the labor certification. 8 C.F.R. § 204.5(l)(3)(ii)(B). To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. *Id.* Evidence of such training or experience "must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien." 8 C.F.R. § 204.5(l)(3)(ii). All labor certification requirements must be met by the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

The labor certification in this case requires a high school education or a foreign educational equivalent and 24 months of experience as a bookkeeper. The labor certification asserts that the Beneficiary met the educational requirement by virtue of a high school diploma in 1988 from a school called [redacted] in [redacted], Qatar. The labor certification also asserts that the Beneficiary met the experience requirement by virtue of his employment as a financial administrative officer with the [redacted] Health Authority-Hospital Services Sector in [redacted] United Arab Emirates (UAE), from April 2004 to January 2016.

As evidence of the Beneficiary's education the Petitioner has submitted a copy of an English language document dated June 26, 1988, from the Ministry of Education, Examinations Department, in Qatar certifying that the Beneficiary passed the examination for the Qatari General Secondary Education Certificate during the academic year 1987-88. The Petitioner has also submitted an unidentified document which appears to be in the Arabic language. The Petitioner has not explained whether the English language document is a translation of the Arabic language document, or perhaps of some other document.[2] Furthermore, the record lacks an evaluation of the educational credentials and therefore does not demonstrate that the Beneficiary has the foreign equivalent of a U.S. high school diploma. On remand the Director should determine whether the documentation of record establishes that the Beneficiary has the foreign educational equivalent of a U.S. high school diploma.

As evidence of the Beneficiary's employment experience the Petitioner has submitted copies of a letter from the [redacted] Health Authority, dated November 2, 2015. On remand the Director should determine whether this letter meets the substantive requirements of 8 C.F.R. § 204.5(l)(3)(ii) and establishes that the Beneficiary has the requisite experience to qualify for the job offered under the terms of the labor certification. Specifically, whether the Beneficiary's prior employment experience was in the job offered, as required.

[2] If the English language document is a translation of an Arabic language document, it does not appear to be a certified translation as prescribed in the regulation at 8 C.F.R. § 103.2(b)(3).

If deemed necessary, the Director may issue a request for additional evidence of the Beneficiary's educational and experience requirements.

III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for further consideration of the Beneficiary's educational and experience credentials, and whether they meet the requirements of the labor certification.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of O-L- Inc.,* ID# 4899257 (AAO July 1, 2019)