U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-, INC.

DATE: JULY 2, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a preschool arts and music academy, seeks to employ the Beneficiary as a file clerk. 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 Texas Service Center initially approved the petition in January 2016. The Director subsequently revoked the approval on the grounds that (1) the Petitioner did not establish that the Beneficiary had the requisite experience to qualify for skilled worker classification and to meet the terms of the labor certification, and (2) the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward.

On appeal the Petitioner submits additional documentation and asserts that the evidence of record overcomes the Director's grounds for revocation.

Upon *de novo* review, we will sustain the appeal.

To qualify for classification as a skilled worker a beneficiary must have at least two years of training or experience. 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification. *Id.* All requirements must be met by the petition's priority date,[1] which in this case is May 29, 2014. *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 24 months of experience in the job offered and states that the Beneficiary met this requirement by virtue of her employment as a file clerk with a preschool in [redacted], for a three and a half year period from January 2008 through June 2011. Based on the entire record, including the materials submitted in support of the appeal, we find that the Petitioner has established, by a preponderance of the evidence, that the Beneficiary gained the requisite experience to qualify

[1] The "priority date" of a petition is the date the underlying labor certification was filed with the Department of Labor. See 8 C.F.R. § 204.5(d).

for skilled worker classification and meet the terms of the labor certification. Accordingly, the Petitioner has overcome this ground for revocation.

A petitioner must also establish its ability to pay the proffered wage stated in the labor certification from the priority date onward. As provided in the regulation at 8 C.F.R. § 204.5(g)(2), evidence of this ability to pay shall be in the form of copies of annual reports, or federal tax returns, or audited financial statements. In the revocation decision the Director found that the Petitioner established its ability to pay the proffered wage in 2016, the year the petition was originally approved. Based on audited financial statements for 2014 and 2015 submitted on appeal, we find that the Petitioner has also established its ability to pay the proffered wage in those two years. Therefore, the Petitioner has established its continuing ability to pay the proffered wage from the priority date of the petition through the date the petition was originally approved. Accordingly, the Petitioner has overcome this ground for revocation as well.

ORDER: The appeal is sustained.

Cite as *Matter of I-, Inc.,* ID# 3452499 (AAO July 2, 2019)