MATTER OF V- INC

DATE: JULY 9, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an information technology and management consulting company, seeks to employ the Beneficiary as a senior application developer. 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 denied the petition. The Director found that the Beneficiary did not qualify for the requested classification because he did not meet the minimum requirements, in particular the educational requirement, of the labor certification.

On appeal, the Petitioner asserts that the Beneficiary qualifies for the proffered position because he meets the minimum requirements of the labor certification through a combination of education, training, and experience

Upon *de novo* review, we will withdraw the Director's decision and remand the case for further consideration and the issuance of a new decision.

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, 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. Second, the employer files an immigrant visa petition with U.S. 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.

In order to qualify for skilled worker classification, a beneficiary must possess at least two years of training or experience and meet the "educational, training or experience, and any other requirements of the individual labor certification." 8 C.F.R. § 204.5(l)(3)(ii)(B). The labor certification requirements must be met by the priority date of the petition.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. ANALYSIS

At issue in this case is whether the Beneficiary meets the minimum requirements of the labor certification to qualify for the job offered and is otherwise eligible for the requested skilled worker classification.

In his decision the Director referred to the petition as one seeking advanced degree professional classification for the Beneficiary and stated that the Petitioner could establish the Beneficiary's eligibility for this classification, in accord with 8 C.F.R. § 204.5(k)(3)(i), by documenting that he had either a U.S. advanced degree or a foreign equivalent degree, or a U.S. baccalaureate degree or a foreign equivalent degree plus five years of qualifying experience. The Director found that the Beneficiary was not eligible because he does not have either a U.S. advanced degree or a foreign equivalent degree, or a U.S. baccalaureate or a foreign equivalent degree (without which experience cannot be considered for purposes of advanced degree professional classification).

This decision was erroneous, however, because the Petitioner is not seeking advanced degree professional classification for the Beneficiary. The Petitioner is seeking skilled worker classification, which requires that the Beneficiary have two years of qualifying experience plus whatever additional requirements are prescribed in the labor certification. In this case, the labor certification requires a master's degree or a foreign educational equivalent in computer science, information technology, or a related field of study and six months of experience in the job offered or as an application developer or in a related occupation.[2]

Because the Director did not adjudicate the petition as a request for skilled worker classification under section 203(b)(3)(A)(i) of the Act and did not properly consider whether the Beneficiary meet the requirements of the individual labor certification in accord with 8 C.F.R. § 204.5(l)(3)(ii)(B), we will remand the matter. On remand, the Director shall analyze whether the Beneficiary's education is sufficient to meet the terms of the labor certification filed in support of a skilled worker petition. The Director shall also determine whether the Beneficiary merits skilled worker classification.

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[1] The priority date of a Form I-140 petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is July 24, 2017.

[2] In the request for evidence (RFE), the Director erroneously stated that the Petitioner could meet the requirements of the labor certification with a U.S. or foreign equivalent master's degree or a U.S. or foreign equivalent bachelor's degree and five years of qualifying experience. This is incorrect because the labor certification does not allow the minimum educational requirement to be met with a bachelor's degree, or a bachelor's degree and five years of qualifying experience.

III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director for proper consideration of whether the Beneficiary meets the requirements of the individual labor certification and whether he is otherwise eligible for classification as a skilled worker.

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

Cite as *Matter of V- Inc*, ID# 1581094 (AAO July 9, 2018)