U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-G- CORP.

DATE: JULY 13, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a restaurant, seeks to employ the Beneficiary as a cook. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality 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 two years of training or experience.

The Director of the Nebraska Service Center denied the visa petition, concluding that the Petitioner had not established its ability to pay the Beneficiary the proffered wage from the priority date of the petition onward.[1]

On appeal, the Petitioner asserts that the evidence in the record establishes its ability to pay the proffered wage and that the Director did not consider the totality of its financial circumstances in reaching his decision. Upon *de novo* review, we will sustain the appeal.

The priority date of the petition is April 30, 2001, and the proffered wage is $39,291.20 per year. Therefore, the Petitioner must demonstrate its ability to pay the Beneficiary the annual wage of $39,291.20 from April 30, 2001, onward. 8 C.F.R. § 204.5(g)(2).

The Director determined that the Petitioner had not established its ability to pay the proffered wage from 2001 through 2005 based on his analysis of the Petitioner's net income and net current assets reflected on its federal tax returns, and considering the wages paid to the Beneficiary during that period. In 2001, the Petitioner's net income and the Beneficiary's wages were $15,658.20 less than the proffered wage. In 2002, the combination of the Beneficiary's wages and the Petitioner's net income fell short of the proffered wage by $13,537.20. In 2003 and 2004, these shortfalls were $28,891.20 and $18,931.20 respectively. In 2005, the Petitioner's net income and the wages it paid the Beneficiary exceed the proffered wage, establishing its ability to pay for that year.

[1] The priority date of a visa petition is the date that the underlying labor certification is filed with the U.S. Department of Labor.

Since the wages paid to the Beneficiary, the Petitioner's net income, and its net current assets do not establish the Petitioner's ability to pay the proffered wage from 2001 through 2004, we will evaluate its ability to pay the proffered wage considering the totality of circumstances. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

On appeal, the Petitioner, which began operations in 1992, argues that its ability to pay the proffered wage during the relevant period is reflected in the increase in its revenues. The Petitioner also maintains that the officer compensation paid to its two co-owners during the relevant period provided it with sufficient financial resources to pay the proffered wage.

Shareholders of an S corporation have the authority to allocate the expenses of that corporation for various legitimate business purposes, and the compensation of officers is an expense category on the federal tax return. Here, the Petitioner's tax returns for the relevant period report a substantial amount of compensation paid to its two officers. The Petitioner also submits a letter from its president stating his willingness to reduce his compensation by the comparatively small amount necessary to meet the proffered wage.

Therefore, considering the number of years that the Petitioner has been in business, the size of its operations, its increasing revenues, and its stated willingness to use part of its substantial officer compensation to pay the shortfall between the wages paid to the Beneficiary and its net income, we conclude that the Petitioner established its continuing ability to pay the proffered wage beginning on the April 30, 2001, priority date.

Accordingly, we will withdraw the Director's denial of the petition and sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of B-G- Corp.*, ID# 452580 (AAO July 13, 2017)