U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C- LLC

DATE: JULY 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electronic commerce company, seeks to employ the Beneficiary as a senior product manager. It requests his classification as a professional under the third-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based, "EB-3" category allows a U.S. business to sponsor a foreign national with a bachelor's degree for lawful permanent resident (LPR) status.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the prior use of the accompanying labor certification to obtain LPR status for the Beneficiary invalidated the certification.

On appeal, the Petitioner asserts that case law and regulations do not support the denial.

Upon *de novo* review, we will withdraw the Director's decision and remand this matter for further consideration consistent with the following opinion.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer files a labor certification application with 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). The DOL must certify that the United States lacks able, willing, qualified, and available workers for an offered position, and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *Id.* If the DOL certifies a position, the employer must then file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, a petitioner must demonstrate a beneficiary's satisfaction of the certified job requirements. Finally, if USCIS approves a 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 petition for a professional must generally include a valid labor certification. 8 C.F.R. § 204.5(l)(3)(i). In this case, the Petitioner seeks to re-classify the Beneficiary using the same labor certification that accompanied a prior approved immigrant petition and formed the basis for the Beneficiary's adjustment of status.[1] Because the Beneficiary's adjustment of status was approved, the Director concluded that the job opportunity certified in the labor certification no longer existed. *See* 20 C.F.R. § 656.30(c)(2) (stating that a labor certification remains valid only for the particular job opportunity stated on it). The Director therefore found that the labor certification was not valid for the immigrant petition in this case.

However, the record indicates that eight days before the approval of the Beneficiary's adjustment of status application, USCIS received a letter from his attorney of record, withdrawing the filing. *See* 8 C.F.R. § 103.2(b)(6) (allowing an applicant's withdrawal of an application "at any time until a decision is issued by USCIS"). In prior petition proceedings, the Director stated that USCIS did not recognize the withdrawal because the agency did not "connect" the letter to the Beneficiary's file until after the application's approval.

The record indicates USCIS' receipt of the Beneficiary's withdrawal letter before the application's approval. The letter identified the application by its corresponding alien registration and receipt numbers, and clearly stated the applicant's withdrawal of the application. Thus, the record establishes the Beneficiary's withdrawal of his adjustment application before its approval. *See Matter of Cintron*, 16 I&N Dec. 9, 9 (BIA 1976) (barring adjudication of a benefit request after its withdrawal).

Besides the labor certification's validity, the record does not indicate the Director's consideration of the petition's merits. We will therefore remand this matter. On remand, the Director should recognize the labor certification's validity, resume adjudication of the petition, and enter a new decision.

III. CONCLUSION

Contrary to the Director's decision, the record establishes the validity of the labor certification. The record, however, does not indicate consideration of the petition's remaining merits.

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

Cite as *Matter of A-C- LLC*, ID# 122898 (AAO July 26, 2017)

[1] The Beneficiary subsequently voluntarily abandoned his LPR status.