U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-S-, INC.

DATE: JUNE 7, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a provider of networking services and solutions, seeks to employ the Beneficiary as a software engineer. The Petitioner requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that it is a successor-in-interest to the employer stated on the labor certification due to the differences between the job offered by the Petitioner and the job duties listed on the labor certification. The Petitioner appealed the matter to us, and we dismissed the appeal, affirming the Director's decision.

On motion to reopen and motion to reconsider, the Petitioner submits evidence of its recruitment including evidence of how the position was advertised to potential U.S. workers. The Petitioner states that any differences between the job duties of the position offered and those stated on the labor certification are minor and would not have affected the recruitment of potential U.S. workers.

Upon review, we will grant the motion to reopen and sustain the appeal. Accordingly, the motion to reconsider is moot and need not be addressed in this decision.

I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A petitioner may, under certain circumstances, rely on a labor certification approved for another business entity if the petitioner is a successor-in-interest to the original labor certification employer. United States Citizenship and Immigration Services has not issued regulations governing immigrant

visa petitions filed by a successor-in-interest employer. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). Establishing a successor-in-interest relationship under *Matter of Dial Auto* is a three-part test. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor employer. Second, the petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. *Id.*

At issue on motion is whether the job opportunity with the Petitioner is the same as originally offered on the labor certification in order for the Petitioner to qualify as a successor-in-interest to the labor certification employer. In this case, the Petitioner filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the Beneficiary and asserted that it is the successor-in-interest to the employer that filed the labor certification. The Director denied the petition, concluding that the job description offered by the Petitioner indicates that it is not the same job as stated on the labor certification. On appeal, we found that because the Petitioner had not provided evidence of the recruitment conducted for the position offered, we were unable to determine whether the differences between the job offered and the job duties as stated on the labor certification would have affected the labor market test, which is a key consideration in determining whether the job offer is the same as originally stated on the labor certification.

On motion, the Petitioner submits it recruitment for the offered position along with documentation from the U.S. Department of Labor describing the supervised recruitment process that the Petitioner went through after acquiring the labor certification employer. The Petitioner also submits a detailed comparison of the two positions explaining how the duties stated in the labor certification correlate to the duties of the offered position. After a review of the evidence in the record, we find that the Petitioner has demonstrated that any differences between the job offered and the job duties stated on the labor certification would not have affected the labor market test, and as such, the position offered is the same position as stated on the labor certification.

III. CONCLUSION

On motion, we find that the Petitioner has established that, more likely than not, the job offered to the Beneficiary is the same as the job offered by the labor certification employer. As the Petitioner previously demonstrated that the ownership of the predecessor employer was transferred to it and that it is otherwise eligible for the immigrant visa, the Petitioner has established a successor-in-interest relationship to the labor certification employer.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of C-S-, Inc.*, ID# 10769 (AAO June 7, 2017)