U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-G- LLC

DATE: JUNE 21, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of investment and fund management services, seeks to employ the Beneficiary as an executive/personal assistant. It requests his classification under the third-preference immigrant category as a professional. 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 status.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the proffered wage.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred by disregarding its current assets.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, an employer must first obtain 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). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves a position, an employer must next submit the certification in an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a petitioner can pay a proffered wage. If USCIS approves a petition, a foreign national may finally 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. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence.[1] 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of executive/personal assistant as $70,450 a year. As of the Director's decision and the appeal's filing, however, required evidence of the Petitioner's ability to pay the proffered wage in 2017, the year of the petition's priority date, was not yet available.[2]

The Petitioner should now be able to provide an annual report, federal income tax returns, or audited financial statements for 2017. We will therefore remand this matter for further proceedings.

On remand, the Director should ask the Petitioner to provide required evidence of its ability to pay the proffered wage in 2017 and afford it a reasonable opportunity to respond. The Petitioner may also submit additional evidence of its ability to pay, including documentation supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967). Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

As of the Director's decision and the appeal's filing, required evidence of the Petitioner's ability to pay the proffered wage in the year of the petition's priority date was not yet available. We will therefore remand the matter.

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 A-C-G- LLC*, ID# 1445398 (AAO June 21, 2018)

[1] This petition's priority date is March 8, 2017, the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

[2] The Petitioner submitted a copy of a 2017 "annual report" filed with state officials. Unlike an annual report delivered to shareholders, however, the state report lacks financial information about the Petitioner. The report therefore does not satisfy the requirements of 8 C.F.R. § 204.5(g)(2).