U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-, INC.

DATE: MAR. 9, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an IT consulting services company, seeks to employ the Beneficiary as a management analyst under the immigrant classification of advanced degree professional. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows U.S. employers to sponsor members of the professions holding advanced degrees for lawful permanent residence. The petition was initially approved, but the approval was subsequently revoked by the Director, Texas Service Center. The matter is now before us on appeal. The appeal will be sustained.

The I-140 petition, as required by statute, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was filed with the U.S. Department of Labor (DOL) on November 27, 2013, and certified by the DOL. The Director initially approved the petition.

However, the Director later revoked the approval on the grounds that the Petitioner did not establish its continuing ability to pay the proffered wage of the instant Beneficiary, as well as the proffered wages of all of its other beneficiaries of I-140 petitions, from the priority date of the instant petition up to the present. The Petitioner filed a timely appeal, along with a brief from counsel and additional documentation. We conduct appellate review on a *de novo* basis.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage of the job offered from the priority date up until the date the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). The priority date of a petition is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is November 27, 2013.

Upon review of the entire record, including the materials submitted by the Petitioner in support of the appeal and in response to our requests for additional evidence, we find that the Petitioner has overcome the grounds for revocation in the Director's decision. We determine that the Petitioner has established that it more likely than not has had the continuing ability to pay the proffered wage from the priority date up to the present. This is based on the Petitioner's actual payment of the full proffered wage in

2014 and 2015 documented by W-2 Forms accompanied by the required 8 C.F.R. § 204.5(g)(2) evidence. In 2013, the Petitioner's documented wages paid to the Beneficiary and its net current assets would demonstrate the ability to pay this Beneficiary and the Petitioner's other sponsored I-140 beneficiaries. We also determine that the Beneficiary had all the education, training, and experience required on the labor certification as of the priority date. Accordingly, we will rescind the revocation, and approve the petition under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the Beneficiary as an advanced degree professional.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of A-C-, Inc.*, ID# 84995 (AAO Mar. 9, 2017)