U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A- INC.

DATE: MAR. 14, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a computer software and hardware development company, seeks to employ the Beneficiary as a consulting engineer. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" 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 petition on the ground that the Beneficiary did not meet the minimum educational requirements for the job opportunity as specified on the labor certification.

On appeal, the Petitioner asserts that the Director misconstrued the requirements of the labor certification and that the Beneficiary does meet the minimum requirements for the job opportunity.

Upon *de novo* review, we will sustain the appeal.

To be eligible for classification as a skilled worker a beneficiary must have at least two years of qualifying training or experience. *See* 8 C.F.R. § 204.5(l)(2). Furthermore, the beneficiary must meet all of the specific educational, training, experience, and other requirements of the labor certification by the petition's priority date.[1] .*See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case the Director denied the petition finding that the Beneficiary did not have the degree necessary to meet the primary requirements of the offered position. However, the Director appears to have overlooked the alternate requirements listed on the labor certification in box 14 of section H. The record demonstrates that the Beneficiary meets the alternate requirements stated on the labor certification. The record also establishes the Beneficiary's possession of the specific skills required for the offered positon.

[1] The "priority date" of a petition is the date the underlying labor certification was filed with the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in this case is February 15, 2018.

Based on the foregoing analysis, we conclude that the Beneficiary meets the minimum requirements of the labor certification and qualifies for the requested classification of skilled worker.

ORDER: The appeal is sustained.

Cite as *Matter of A- Inc.*, ID# 2991800 (AAO Mar. 14, 2019)