U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29534883

Date: MAR. 18, 2025

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, a not-for-profit healthcare system, seeks to employ the Beneficiary as a medical technologist. It requests the Beneficiary's classification as a professional under the third preference immigrant classification. *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 immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status. *Id*.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner made a bona fide job offer to the Beneficiary or that it intends to employ him in the offered position under the terms and conditions of the labor certification. Specifically, the Director concluded "it appears the beneficiary is actually employed by/will actually be employed by . . . a related but separate legal entity." The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

Any U.S. employer may file an immigrant petition if it is "desiring and intending to employ an alien within the United States. Section 204(a)(1)(F) of the Act; 8 C.F.R. § 204.5(c). A petitioner must intend to employ a beneficiary under the terms and conditions of an accompanying labor certification. *Matter of Izdebska*, 12 (I&N Dec. 54, 55 (Reg'l Comm'r 1966)(affirming a petition's denial where, contrary to the accompanying labor certification, a petitioner did not intend to employ a beneficiary as a domestic worker on a full-time, live-in basis).

On appeal, the Petitioner does not dispute that the Beneficiary is currently an employee of its subsidiary and that he currently receives his salary from that subsidiary. However, it maintains that the record demonstrates that its job offer to the Beneficiary nevertheless remains open and bona fide. The Petitioner emphasizes it is not required to demonstrate that it is currently employing the Beneficiary but merely must provide evidence that it intends to prospectively employ him.

We agree with the Petitioner that the Beneficiary's current employment with its subsidiary does not provide a basis for concluding that the Petitioner does not intend to employ him in the offered position. A petitioner need not employ a beneficiary in an offered position until he or she obtains lawful permanent resident status.

Upon de novo review of the evidence, including relevant documentation explaining the relationship between the Petitioner and its subsidiary and evidence specific to the entities' non-profit status, we conclude the Petitioner has established, by a preponderance of the evidence, that it has the intention and ability to serve as the Petitioner's actual employer notwithstanding his physical assignment to work at its subsidiary's facility. Accordingly, we will withdraw the Director's decision and sustain the appeal.

ORDER: The appeal is sustained.