U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-A-K- LLC

DATE: MAR. 20, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a convenience store, seeks to employ the Beneficiary as a prep cook. It requests classification of the Beneficiary as an unskilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1152(b)(3)(A)(iii). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires less than 2 years of training or experience.

The Director of the Texas Service Center denied the visa petition, concluding that the record did not establish that the Petitioner had the ability to pay the Beneficiary the proffered wage from the visa petition's priority date onward. The matter is now before us on appeal. Upon *de novo* review, we will summarily dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Following our initial review of the record, we issued a notice of intent to dismiss (NOID) to the Petitioner. The NOID informed the Petitioner that a review of U.S. Citizenship and Immigration Services records and publicly available information indicated that its president was the uncle of the Beneficiary in this matter, and that it did not appear that the Petitioner acknowledged this familial relationship during the labor certification process. Finding that the omission of such information would have prevented the U.S. Department of Labor from assessing the extent of the Beneficiary's influence and control over the job opportunity, we informed the Petitioner that we did not find the record to establish the offered position as a *bona fide* job opportunity. We further advised the Petitioner that intentional concealment of the family relationship between its president and the Beneficiary during the labor certification process would be considered the willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act and might result in the invalidation of the labor certification. 20 C.F.R. § 656.30(d).

The NOID allowed the Petitioner 33 days in which to respond. We informed the Petitioner that if it did not respond to the NOID, we may dismiss the appeal. As of the date of this decision, the Petitioner has not responded. As such, the appeal will be summarily dismissed as abandoned.

ORDER: The appeal is summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Matter of D-A-K- LLC, ID# 80122 (AAO Mar. 20, 2017)