U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF G-H-

DATE: MAR. 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a restaurant operator, seeks to employ the Beneficiary as a cook. It requests the Beneficiary's classification as a skilled worker under the third preference immigrant category. *See* Immigration and Nationality Act section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This category allows a U.S. business to sponsor a foreign national with at least 2 years of training or experience for lawful permanent resident status.

The petition was initially approved. But the Director of the Texas Service Center revoked its approval. The Director concluded that the record at the time of the petition's approval did not establish the Petitioner's compliance with regulations governing the accompanying Form ETA 750, Application for Alien Labor Certification (labor certification), approved by the U.S. Department of Labor.

We dismissed the Petitioner's first appeal because it did not identify an erroneous conclusion of law or statement of fact. After reopening the petition on his own motion, the Director again revoked the petition's approval. This time, he concluded that the record at the time of the petition's approval did not establish the Petitioner's ability to pay the proffered wage or the Beneficiary's possession of the minimum required experience for the offered position and the requested classification.

We dismissed the Petitioner's second appeal for the same reason we dismissed the first: it did not identify an erroneous conclusion of law or statement of fact. On the Petitioner's subsequent motion to reopen, we found that the record established the Beneficiary's qualifications, but that the Petitioner still had not demonstrated its ability to pay the proffered wage.

The matter is now before us on a second motion to reopen. The Petitioner submits additional evidence in support of its ability to pay the proffered wage at the time of the petition's approval.

Upon review, we will grant the motion to reopen and sustain the appeal.

The record on motion establishes the Petitioner's ability to pay the proffered wage from the petition's priority date until the petition's initial approval. *See* 8 C.F.R. § 204.5(g)(2) (requiring petitioners to demonstrate their abilities to pay proffered wages from petition priority dates onward).

The Petitioner has therefore overcome the remaining grounds for revocation of the petition's approval. We will withdraw the petition's revocation and restore its approval.

**ORDER:** The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of G-H-*, ID# 163421 (AAO Mar. 30, 2017)