U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-A-C-P-, INC.

DATE: MAR. 30, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an insurance agency, seeks to employ the Beneficiary as an insurance clerk. It requests his classification as an "other worker" under the third-preference, immigrant category. Immigration and Nationality Act, section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This category allows a U.S. business to sponsor a foreign national for lawful permanent resident status as an unskilled worker.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the proffered wage.

On appeal, the Petitioner submits additional evidence, contends that the Director misapplied relevant factors and disregarded evidence, and asserts its ability to pay the proffered wage.

Upon *de novo* review, we will withdraw the Director's decision and remand this matter for further proceedings consistent with the following opinion.

I. ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence.[1] 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

As of the Director's decision and the appeal's filing, copies of the Petitioner's annual report, federal income tax returns, or audited financial statements for 2017, the year of the petition's filing, were not yet available. The Director therefore based his decision largely on financial documentation from 2016. Required evidence of the Petitioner's ability to pay in 2017 should soon be obtainable. We will therefore remand this matter.

[1] This petition's priority date is January 5, 2017, the date the U.S. Department of Labor accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

On remand, the Director should request required evidence of the Petitioner's ability to pay the proffered wage in 2017 and provide the Petitioner with a reasonable opportunity to respond. The Petitioner may also submit other evidence of its ability to pay, including evidence in support of the factors stated in *Matter of Sonegawa,* 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

II. THE MINIMUM REQUIRED EXPERIENCE

Although unaddressed by the Director, the record also does not establish the Beneficiary's possession of the minimum experience required for the offered position.

A petitioner must establish, by a petition's priority date, a beneficiary's possession of all job requirements stated on an accompanying labor certification. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must examine the job offer portion of a certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See Madany v. Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for determining the *content* of the labor certification") (emphasis in original).

Here, the accompanying labor certification states the minimum requirements of the offered position of insurance clerk as a U.S. high school diploma or a foreign equivalent, plus six months of experience in the job offered or in "[a]ny administrative position." Part H.14 of the certification also requires "Reference/Background/Drug Test."

The Beneficiary attested that, before the petition's priority date, he worked for two former employers in India, gaining a total of 11 months of full-time qualifying experience. The Petitioner submitted letters from the businesses stating their employment of the Beneficiary for the periods indicated and in the positions stated on the labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring a petitioner to support a beneficiary's claimed, qualifying experience with letters from former employers).

Contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), however, the letters from the former employers do not describe the Beneficiary's experience. The letters therefore do not establish the Beneficiary's requisite experience in the job offered or in an administrative position.

On remand, the Director should provide the Petitioner a reasonable opportunity to submit additional evidence of the Beneficiary's claimed, qualifying experience for the offered position. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

As of the Director's decision and the appeal's filing, required evidence of the Petitioner's ability to pay the proffered wage from the petition's prior date onward was not yet available; we shall

therefore remand this matter to the Director for further consideration. On remand, the Director should also determine whether the Beneficiary has the experience required by the labor certification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of T-A-C-P-, Inc.*, ID# 1077546 (AAO Mar. 30, 2018)