U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-B-, INC.

DATE: MAY 31, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a full service Korean restaurant, seeks to employ the Beneficiary as a kitchen assistant. It requests classification of the Beneficiary as an "other worker" under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(B)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor for lawful permanent resident status a foreign national who is capable of performing unskilled labor that is not temporary or seasonal in nature and requires less than two years of training or experience.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward.

On appeal the Petitioner submits additional evidence and asserts that the evidence of record establishes its ability to pay the proffered wage.

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

A petitioner must establish that it has the ability to pay the beneficiary the proffered wage, as stated on the labor certification, from the priority date[1] onward. *See* 8 C.F.R. § 204.5(g)(2). In this case, the proffered wage is $16,973 per year, the priority date is May 17, 2017, and the documentation submitted on appeal overcomes the Director's ground for denial. Specifically, the Petitioner's federal income tax return for 2017 shows that its net income exceeded the proffered wage. Accordingly, we find that the Petitioner has established its ability to pay the proffered wage from the priority date onward.

ORDER: The appeal is sustained.

Cite as *Matter of S-B-, Inc.*, ID# 1430314 (AAO May 31, 2018)

[1] The priority date of a petition is the date the underlying labor certification was filed with the Department of Labor.