U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-S-G- INC.

DATE: SEPT. 6, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of software development and consulting services, seeks to employ the Beneficiary as a programmer analyst. It requests his classification under the third-preference immigrant category as a skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based, "EB-3" category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a job requiring at least two years of training or experience.

The Director of the Texas Service Center denied the petition's approval. The Director concluded that, contrary to the Act and Department of Homeland Security regulations, the Petitioner did not demonstrate its intention to employ the Beneficiary in the offered position or its ability to pay the job's proffered wage.

On appeal, the Petitioner argues that the Director disregarded the evidence in the company's response to his written notice of intent to deny (NOID) the petition.

A petitioner must demonstrate eligibility for a requested benefit by a preponderance of evidence. *See, e.g., Matter of Rehman*, 27 I&N Dec. 124, 125 (BIA 2017) (citation omitted). When adjudicating under that standard, U.S. Citizenship and Immigration Services (USCIS) "must examine *each piece of evidence* for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (emphasis added). An adverse decision must "explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i).

Here, contrary to *Chawathe*, the decision does not demonstrate the Director's examination of the evidence in the Petitioner's NOID response. The decision refers to one of the Petitioner's responses to a prior written request for additional evidence. But the decision does not mention the more recently issued NOID or the company's reply to it. The decision concludes that the Petitioner omitted requested evidence of its ability to pay the position's proffered wage from 2016 onward. *See* 8 C.F.R. § 204.5(g)(2) (generally requiring evidence of ability to pay to include copies of annual reports, federal tax returns, or audited financial statements). The record, however, shows that the Petitioner's NOID response included copies of the company's federal income tax returns for 2016 and 2017, and evidence of its wage payments to the Beneficiary in 2016, 2017, and 2018. The

decision neither explains why the Petitioner's documentation is insufficient, nor even mentions the materials. Similarly, the decision states that "the petitioner failed to provide any evidence" supporting its claim that it advertised the possibility that the offered job would require relocation to unanticipated U.S. worksites. The record, however, shows that the Petitioner's NOID response included copies of newspaper ads for the position stating that "[t]ravel and relocation may be required throughout [the] USA." The NOID response also contained a copy of an application for a prevailing wage determination, stating that applicants for the position "[m]ust be willing to travel/relocate to various client locations throughout [the] USA on company paid expenses."

Because the Director did not discuss relevant materials in the Petitioner's NOID response, we will withdraw his decision and remand the matter. On remand, the Director must examine and consider the evidence in the NOID response. If the response was untimely or its evidence does not establish the Petitioner's intention to employ the Beneficiary in the offered position or its ability to pay the proffered wage, the Director must enter a new decision explaining the deficiencies.

Also, the Director asked the Petitioner to demonstrate its ability to pay the combined proffered wages of this and other immigrant petitions that it filed in 2015 and 2016. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (requiring a petitioner to demonstrate its ability to pay the combined proffered wages of multiple petitions). USCIS records, however, indicate that the Petitioner since filed three additional immigrant petitions in 2017 and 2018.[1] Thus, on remand the Director should ask the Petitioner to provide the proffered wages and priority dates of the additional petitions. The Petitioner may also submit additional evidence of its ability to pay the combined proffered wages, including proof of its wage payments to relevant beneficiaries in 2015, 2016, 2017, and 2018, and materials supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

The Director should afford the Petitioner a reasonable period to provide the requested information and any other relevant evidence. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of R-S-S-G- Inc.*, ID# 5985787 (AAO Sept. 6, 2019)

[1] USCIS records identify the three additional petitions by the following receipt numbers: [redacted] [redacted] and [redacted]