U.S. Citizenship and Immigration Services

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

MATTER OF A-

DATE: SEPT. 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a university, seeks to employ the Beneficiary as an assistant professor. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference (EB-2) immigrant classification. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that it was not filed within the validity period of the accompanying labor certification.

On appeal, the Petitioner asserts that the petition was timely filed before the labor certification expired. Upon *de novo* review, we will withdraw the Director's decision and remand this matter for further proceedings consistent with the following opinion and for the entry of a new decision.

## I. LAW AND ANALYSIS

A petition for EB-2 classification must generally include a valid Form ETA 9089, Application for Permanent Employment Certification (labor certification) that has been approved by the U.S. Department of Labor (DOL). 8 C.F.R. § 204.5(k)(4)(i). A labor certification generally expires if not filed with a Form I-140 petition to U.S. Citizenship and Immigration Services within 180 calendar days of the certification. 20 C.F.R. § 656.30(b)(1).

Here, the record indicates that DOL approved the underlying labor certification on May 17, 2016, and that the Petitioner filed the Form I-140 petition on November 14, 2016, which was day 181. The Director rejected the submission, finding that the petition was filed after the labor certification had expired.

Upon review, we find that the Form I-140 petition was properly filed with a valid labor certification. The labor certification was set to expire on November 13, 2016. Because this date fell on a Sunday, the petition could be validly filed the next business day on November 14, 2016. *See* 8 C.F.R. § 1.1 (stating that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.). Therefore, the record reflects that the Petitioner submitted a valid labor certification with the petition, and the

Director should have accepted the petition as properly filed on November 14, 2016. We will therefore withdraw the Director's decision and remand this matter for further consideration and for the entry of a new decision.

## II. CONCLUSION

The Petitioner established that it filed the Form I-140 petition with a valid 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 A-* ID# 671037 (AAO Sept. 11, 2017)