U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-&F-, PLLC

DATE: SEPT. 18, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a law firm, seeks to employ the Beneficiary as an immigration law clerk. It requests her classification under the third-preference, immigrant category as a professional. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). 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 a bachelor's degree.

The Director of the Texas Service Center denied the petition. We dismissed the Petitioner's appeal and denied its following motions to reopen and reconsider. *See, e.g., Matter of F-&F-, PLLC*, ID# 1227651 (AAO May 10, 2018). All the decisions concluded that the Petitioner did not demonstrate its required ability to pay the offered position's proffered wage.

The matter is before us again on motions to reopen and reconsider. The Petitioner submits additional evidence and asserts that, in finding that it did not demonstrate its ability to pay the proffered wage, we misapplied case law.

Upon review, we will deny the motions.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish our misapplication of law or policy based on the record at that time. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also cite a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant motions meeting these criteria and demonstrating eligibility for a requested benefit.

II. ABILITY TO PAY THE PROFFERED WAGE

In its prior motions, the Petitioner demonstrated its ability to pay the annual proffered wage of $56,451 in 2013, the year of the petition's priority date. The Petitioner, however, did not demonstrate its ability to pay in following years. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner

to demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence).

On motion, the Petitioner submits new evidence of its payments to the Beneficiary from 2015 onward. The Petitioner, however, still has not demonstrated its ability to pay the proffered wage in 2014. The Petitioner established that it paid the Beneficiary $46,500 that year. But its federal income tax return for 2014 reflects insufficient amounts of net income and net current assets to fund the $9,951 difference between the proffered wage and the Beneficiary's wages. Citing a letter from its accountant, the Petitioner argues that the tax return overstates the company's current liabilities. The accountant's letter, however, indicates an inflated amount of current liabilities for 2013. The record lacks corroborating evidence that the Petitioner overstated its current liabilities in 2014. Also, the amended net current asset amount that the Petitioner proposes for 2014 would not equal or exceed the $9,951 wage difference. The record therefore does not establish the Petitioner's ability to pay the proffered wage in 2014.

The Petitioner's new evidence establishes its ability to pay the proffered wage in 2015. But the record lacks required evidence of the Petitioner's ability to pay in 2016. Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. 8 C.F.R. § 204.5(g)(2). In a prior motion, the Petitioner submitted evidence that it extended the filing deadline of its federal tax return for 2016 until October 16, 2017. Since that date, the Petitioner has filed two motions to reopen. Without explanation, however, neither motion includes required evidence of its ability to pay in 2016. The record therefore does not establish the Petitioner's ability to pay the proffered wage that year. Thus, based on examinations of the wages the Petitioner paid to the Beneficiary, its net income, and its net current assets, it has not demonstrated its ability to pay in 2014 or 2016.[1]

As the Petitioner argues, we may consider other factors affecting its ability to pay the proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The Petitioner contends that we disregarded "ample evidence" of its "impressive" reputation in the legal field. The record contains evidence of awards and ratings that the petitioning law firm received in recent years. But the awards reflect local and state honors. The petitioner in *Sonegawa*, a fashion designer, had her work featured in magazines of national circulation, including *Time* and *Look*. *Matter of Sonegawa*, 12 I&N Dec. at 615. She also documented that she designed clothes for movie actresses and lectured at numerous design and fashion shows throughout the United States. *Id.* In its field, the Petitioner has not demonstrated a similar level of national acclaim.

The Petitioner also argues that, since 2012, its annual revenues and the annual wages it has paid the Beneficiary have increased. These are favorable factors, but we do not find them sufficient to

[1] As of the filing of this motion to reopen, required evidence of the Petitioner's ability to pay the proffered wage in 2017 may not yet have been available. Therefore, for purposes of this decision, we will consider the Petitioner's ability to pay only through 2016. In any future filings in this matter, however, the Petitioner must submit required evidence of its ability to pay in 2017.

establish the Petitioner's ability to pay under *Sonegawa*. The petitioner's financial documents in *Sonegawa* did not demonstrate her ability to pay the proffered wage in only one relevant year. *Id.* at 614. She documented that the decline in her profits that year stemmed from uncharacteristic costs associated with the business's relocation. *Id.* Here, the Petitioner's finances do not demonstrate its ability to pay the proffered wage in two relevant years. Also, unlike in *Sonegawa*, the Petitioner has not established its incurrence of uncharacteristic costs or losses in those years. Thus, a totality of circumstances under *Sonegawa* does not establish the Petitioner's continuing ability to pay the proffered wage.

III. CONCLUSION

The Petitioner's new evidence does not demonstrate its continuing ability to pay the offered position's proffered wage, from the petition's priority date onward. Its arguments also do not establish our misapplication of law or policy.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of F-&F-, PLLC*, ID# 1794419 (AAO Sept. 18, 2018)