U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-K-P-, [redacted]

DATE: SEPT. 20, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public accounting firm, seeks to employ the Beneficiary as an accountant. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(B)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the Petitioner did not establish its continuing ability to pay the proffered wage of the job offered from the priority date of the petition onward.

On appeal the Petitioner submits a brief and supporting documentation, and asserts that the evidence of record establishes its continuing ability to pay the proffered wage. Upon *de novo* review, we will sustain the appeal.

The Petitioner's Form I-140, Immigrant Petition for Alien Worker, was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), with a priority date of June 24, 2015.[1] The proffered wage of the job offered is $63,939 per year.

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the beneficiary was employed and paid by the petitioner during the period following the priority date. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence is considered *prima facie* proof of the petitioner's ability to pay the proffered wage. If the petitioner does not establish that it has paid the beneficiary an amount at least equal to the proffered wage from the priority date onward, USCIS will examine the net income and net current assets figures entered on the petitioner's federal income tax return(s). If either of these figures equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the beneficiary in a given year, the petitioner would be considered able to pay the proffered wage during that year.

[1] The date the labor certification is filed is called the "priority date." A beneficiary must be eligible for the requested classification as of that date.

In this case, the Beneficiary has been employed by the Petitioner since 2012. The record includes copies of the Beneficiary's Forms W-2, Wage and Tax Statements, for 2015 and 2016, as well as the Beneficiary's year-end pay statements for 2015 and 2016. These documents show that the wages paid to the Beneficiary totaled $62,551.80 in 2015, which was $1,387.20 below the proffered wage, and $67,119.66 in 2016, which exceeded the proffered wage.

The record also includes the Beneficiary's biweekly pay statements from January to mid-March 2017 showing that his pay rate is now $30.74 per hour, which exceeds the proffered wage.

We conclude, therefore, that the Petitioner has established its ability to pay the proffered wage of $63,939 in 2016 and for the first three months of 2017 based on wages actually paid to the Beneficiary, and was $1,387.20 short of paying the proffered wage in 2015.

As discussed by the Director, the Petitioner did not have net income or net current assets in 2015 which could have been utilized to cover the difference between the proffered wage and the wages actually paid to the Beneficiary that year. The Petitioner is a domestic limited liability partnership. As recorded on its Form 1065, U.S. Return of Partnership Income, for 2015, the Petitioner had a net loss of $604,692 and net current liabilities of $613,577 that year.

The record includes a letter from one of the Petitioner's partners, stating that he could have paid the $1,387.20 shortfall out of his guaranteed payments from the partnership over the course of that year. As explained by the guaranteed payments to partners are based on several factors, including the salary needs of its employees. The Petitioner's Form 1065 for 2015 confirms that the firm made guaranteed payments totaling $1,886,450 to nine partners, including the $193,056 to The record also includes a copy of Form 1040, U.S. Individual Income Tax Return, for 2015, which indicates that he received a regular salary of $89,816 in addition to his partnership distributions and that his adjusted gross income in 2015 was $212,602. This documentation establishes that was willing and able to forego $1,387.20 in guaranteed payments from the Petitioner in order to pay the Beneficiary's proffered wage in 2015.

The Petitioner has established its continuing ability to pay the proffered wage from the priority date onward. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of B-K-P-,* ID# 680899 (AAO Sept. 20, 2017)