U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-H-, INC.

DATE: SEPT. 26, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a software publisher, seeks to permanently employ the Beneficiary in the United States as a senior QA engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the 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 after determining that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward.

On appeal, the Petitioner asserts that it has demonstrated its ability to pay the proffered wage to the Beneficiary.

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

In general, 8 C.F.R. § 204.5(g)(2) requires annual reports, federal tax returns, or audited financial statements as evidence of a petitioner's ability to pay the proffered wage. That regulation further provides: "In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage."

On the petition, the Petitioner claimed to have been established in 2007, to have a gross annual income of $21.4 million, and to currently employ 140 workers. The priority date in this matter is March 16, 2016. The proffered annual wage as stated on the labor certification is $112,632 and the difference between the proffered wage and the wages actually paid to the Beneficiary in 2016 is $6,158.87.[1]

[1] The Petitioner submitted a copy of a December 30, 2016, paystub showing that it had paid the Beneficiary $106,473.13 in 2016.

The Petitioner submitted two letters from its chief financial officer (CFO), who affirmed that the company employed over 100 workers and who attested to the company's continuing ability to pay the proffered wage to the Beneficiary. On appeal, the Petitioner also submits a letter from its chief executive officer (CEO), who describes the company's resources for paying the proffered wage to the Beneficiary from the priority date onward.

The record does not contain derogatory information that would cause us to doubt the credibility of the information contained in the officers' statements. The statements of the CFO and CEO are corroborated by copies of the company's audited financial statements from 2012 through 2015[2] and copies of its IRS Forms 941, Employer's Quarterly Federal Tax Returns, for the second and third quarters of 2016, which show wages paid to over 100 workers in each quarter. Therefore, the Petitioner has demonstrated, by a preponderance of the evidence, its ability to pay the proffered wage.

ORDER: The appeal is sustained.

Cite as *Matter of C-H-, Inc.*, ID# 612438 (AAO Sept. 26, 2017)

[2] The appeal was submitted on March 30, 2017, before its 2016 federal income tax return was due.