U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-C-P-

DATE: SEPT. 29, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a public school district, seeks to employ the Beneficiary as a special education teacher. 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 Texas Service Center denied the petition on the ground that the Petitioner did not respond to a request for evidence (RFE) to establish its ability to pay the Beneficiary's proffered wage.

The Petitioner filed a Form I-290B, Notice of Appeal or Motion, together with a brief contending that it responded to an initial RFE from the Director, but that it never received the Director's second RFE.[1]

We issued a new RFE instructing the Petitioner to submit additional evidence of its ability to pay the proffered wage and of the Beneficiary's qualifying experience.

Upon *de novo* review, after reviewing the Petitioner's response to our RFE, 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 November 18, 2013.[2] As stated in Part G of the labor certification, the proffered wage is $35,000 per year.

[1] The record shows that the Texas Service Center issued an initial RFE on May 13, 2015, that the Petitioner responded on June 8, 2015, but that the submitted materials were not incorporated into the record. The Texas Service Center issued its second RFE on March 11, 2016.

[2] 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.

The regulation at 8 C.F.R. § 204.5(g)(2) provides that a petitioner must establish its the ability to pay the beneficiary the proffered wage from the priority date onward and submit evidence thereof in the form of copies of annual reports, federal tax returns, or audited financial statements. Moreover, if a 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.

In this case, the Petitioner submits copies of audited financial statements, one of the required forms of evidence in 8 C.F.R. § 204.5(g)(2), for the fiscal years ending on June 30, 2014, June 30, 2015, and June 30, 2016. The Petitioner also states that it has employed the Beneficiary since 2008 and submits copies of the Forms W-2, Wage and Tax Statements, it issued to the Beneficiary for the years 2013-2016, showing that she received "wages, tips, other compensation" in the amounts of $41,981.58 in 2013, $40,518.03 in 2014, $40,877.05 in 2015, and $41,660.38 in 2016.

Based on the foregoing evidence, which shows that the Petitioner has paid the Beneficiary more than the proffered wage each year from the priority date onward, we find that the Petitioner has established its continuing ability to pay the proffered wage from the priority date up to the present.

A petitioner must also establish that the beneficiary meets all of the educational, training, experience, and other requirements of the offered position, as stated on the labor certification, by the priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). In this case, the labor certification requires a bachelor's degree in special education or another field of education, or a foreign educational equivalent, 12 months of experience in the job offered, and a teaching license from Virginia.

The Petitioner submitted evidence establishing that the Beneficiary possessed the requisite education, experience, and teaching license by the priority date of the petition. We conclude, therefore, that the Beneficiary meets the minimum requirements of the labor certification and is eligible for classification as a professional. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of N-C-P-*, ID# 430571 (AAO Sept. 29, 2017)