U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-C- INC.

DATE: APR. 25, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a provider of information technology solutions, seeks to employ the Beneficiary as a software engineer. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" 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 master's degree, or a bachelor's degree followed by five years of employment experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the combined proffered wages of this and other petitions.

On appeal, the Petitioner submits additional evidence that the company contends establishes its ability to pay the applicable wages.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. ABILITY TO PAY

A petitioner must demonstrate its continuing ability to pay the proffered wage of an offered position, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). If a petitioner filed immigrant petitions for other beneficiaries, it must also demonstrate its ability to pay the combined proffered wages of its petitions that were pending or approved as of an applicable petition's priority date, or filed thereafter. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014).

On appeal, the Petitioner submits additional evidence demonstrating its ability to pay the combined proffered wages of this and its seven other petitions, from this petition's priority date of May 8, 2017. Because the record establishes the Petitioner's ability to pay, we will withdraw the Director's contrary decision.

II. INTENTION TO EMPLOY IN THE OFFERED POSITION

Although the appeal overcomes the denial ground, the record does not establish the petition's approvability. The Petitioner has not demonstrated its intention to employ the Beneficiary in the offered position.

A business may file a petition if it is "desiring and intending to employ [a foreign national] within the United States." Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). A petitioner must intend to employ a beneficiary under the terms and conditions of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming a denial where, contrary to an accompanying labor certification, a petitioner did not intend to employ a beneficiary as a domestic worker on a full-time, live-in basis). A labor certification also remains valid only for the geographic area of intended employment stated on it. 20 C.F.R. § 656.30(c)(2); *see also Matter of Sunoco Energy Dev. Co.*, 17 I&N Dec. 283, 284 (Reg'l Comm'r 1979) (affirming denial where a petitioner intended to employ a beneficiary in a different U.S. state than listed in the worksite address on the accompanying labor certification).

Here, the Petitioner states its intention to permanently employ the Beneficiary in the offered position of software engineer. The petition and labor certification identify the intended worksite as the Petitioner's headquarters in Texas.

The record, however, does not establish the Petitioner's intention to permanently employ the Beneficiary at its headquarters. The labor certification application states that, before its filing, the Petitioner employed the Beneficiary for more than a year in a software engineering position at the company's headquarters. But the labor certification lists the Beneficiary's residence in Virginia. In response to the Director's request for additional evidence, the Petitioner's president stated that the Beneficiary was temporarily working at client sites in Virginia and New Jersey, but will eventually work at the company's headquarters.[1] At a site visit in September 2017, however, a company manager told a U.S. immigration officer that most of the Petitioner's employees work at client sites and that sponsored beneficiaries work in house at the company's headquarters only until another project is found at a client site. The manager also stated that the Petitioner expected to complete its only in-house project in 2018.

The record does not establish whether or for how long the Petitioner will employ the Beneficiary at its company headquarters, or what he will do there. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies). We will therefore remand the matter for additional fact-finding. On remand, the Director should inform the Petitioner of the evidentiary deficiencies and afford the company a reasonable period to respond. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

[1] If an offered position requires relocation to unforeseeable locations, a labor certification may describe the worksite as the employer's headquarters and "various unanticipated locations throughout the United States." *See, e.g, Matter of Infosys, Ltd.*, 2016-PER-00074 (BALCA May 12, 2016). The labor certification here, however, simply lists the proposed worksite as the Petitioner's office address.

III. CONCLUSION

The record on appeal establishes the Petitioner's ability to pay the proffered wage. The Petitioner, however, has not demonstrated its intention to permanently employ the Beneficiary in the offered position as described on the labor certification.

ORDER: The decision of the Director is withdrawn. The record is remanded for entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of C-C- Inc.*, ID# 1921131 (AAO Apr. 25, 2019)