



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-D.S-C-, INC.

DATE: JUNE 7, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an insurance company, seeks to employ the Beneficiary as a survey director. 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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated its ability to pay the Beneficiary's proffered wage.

The matter is now before us on appeal. On appeal, the Petitioner states that the amount of wages paid to the Beneficiary establishes its ability to pay the proffered wage and that the Director should have considered additional evidence of its ability to pay the proffered wage when its tax return for the relevant year was not available. Upon *de novo* review, we will sustain the appeal.

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the labor certification was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

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Here, the labor certification was accepted on August 25, 2014, the priority date. *See* 8 C.F.R. § 204.5(d). The proffered wage as stated on the labor certification is \$25,043 per year.

The Petitioner submitted its 2014 tax return on appeal as requested. As the Petitioner files its tax returns based on a fiscal year, this tax return was not available at the time the Form I-140 was filed. After consideration of the evidence in the record and additional evidence submitted in response to our request for evidence, the Petitioner has established that it has the ability to pay the Beneficiary's proffered wage specified on the labor certification as of the August 25, 2014, priority date. Therefore, the petition is approved under section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has met that burden.

**ORDER:** The appeal is sustained.

Cite as *Matter of L-D.S-C-, Inc.*, ID# 16993 (AAO June 7, 2016)