U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M.Y.C-&R-C-, INC.

DATE: NOV. 10, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a chiropractic and rehabilitation center, seeks to classify the Beneficiary as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2); 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Petitioner asserts that the Beneficiary qualifies for Schedule A, Group I classification as a physical therapist. As required by statute, the Petitioner included a U.S. Department of Labor ETA Form 9089, Application for Permanent Employment Certification. The Director found that the Petitioner did not demonstrate its "continuing ability to pay the wage offered" and that it did not have a "contractual employment arrangement" with the Beneficiary." On appeal, the Petitioner submits a brief and additional evidence. On February 25, 2015, we sent the Petitioner a notice requesting copies of annual reports, federal tax returns or audited financial statements for 2014; the Beneficiary's 2014 W-2 Wage and Tax Statement; his final 2014 paystub; and any employment contracts. The Petitioner's response includes the suggested documents. Based upon the record, the Petitioner has overcome the Director's findings.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
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> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" in pertinent part as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." The regulation further provides: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

In addition, the regulation at 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.

II. ANALYSIS

On the ETA Form 9089, Part H, the Petitioner indicates that the minimum education requirement for the position is a Doctor of Physical Therapy degree or a foreign educational equivalent. The Beneficiary in this matter holds a Doctor of Physical Therapy from [redacted] in [redacted] New York.

The Petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which, because the Petitioner seeks Schedule A, Group I designation, is the date U.S. Citizenship and Immigration Services (USCIS) received the petition. *See* 8 C.F.R. § 204.5(d). USCIS received the instant petition on March 27, 2014. The proffered wage as stated on the ETA Form 9089 is $65,000. In determining the Petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the Petitioner employed and paid the Beneficiary during that period. If the Petitioner presents documentary evidence that it employed the Beneficiary at a salary equal to or greater than the proffered wage, it will have provided *prima facie* proof of the Petitioner's ability to pay the proffered wage.

Because the Petitioner's 2014 income tax return was not available at the time of filing, the Director relied on the Petitioner's 2013 tax documentation. In response to our February 25, 2015, notice, the Petitioner submits sufficient financial information relating to 2014, including the Petitioner's 2014 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, the Beneficiary's 2014 IRS Forms W-2, Wage and Tax Statement, and 1040A, U.S. Individual Income Tax Return, to establish both its ability to pay the offered wage of $65,000 per year and that the Beneficiary is its employee. The Beneficiary's 2014 Form W-2 shows that the Petitioner paid the Beneficiary $65,016 in employee wages and the Beneficiary's individual tax return lists his wages as

his only income. Therefore, as of the priority date in 2014, the Petitioner had the ability to pay the Beneficiary the proffered wage of $65,000.

In addition, the Petitioner submits information from the Health Insurance Portability and Accountability Act (HIPAA) online service for validating National Provider Identifiers (NPIs) and the Beneficiary's online Medicare Application. This material reflects that his complete NPI account and his Medicare application, while providing an "individual" identifier for the Beneficiary, both currently characterize the Beneficiary as an employee of the Petitioner, and not a sole proprietor or someone with his own practice. Accordingly, the Petitioner has established the Beneficiary's employment by the Petitioner.

III. CONCLUSION

The Petitioner has submitted sufficient evidence to show that the Beneficiary is eligible for the classification sought. 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). Here, the Petitioner has sustained that burden.

ORDER: The appeal is sustained.

Cite as *Matter of M.Y.C-&R-C-, Inc.*, ID# 10921 (AAO Nov. 10, 2015)