



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

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

MATTER OF T-P-S-, INC.

DATE: NOV. 16, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a “Custom Software Development and Programming” business, seeks to permanently employ the Beneficiary in the United States as a “Computer Systems Analyst” under the immigrant classification of advanced degree professional. *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 and the matter came before us on appeal. On June 3, 2014, we withdrew the Director’s decision and remanded the matter to the director to consider whether a *bona fide* job offer existed. The Director issued the petitioner a request for evidence (RFE) and ultimately concluded that the discrepancies we noted in remanding the petition had not been resolved. The matter is again before us on appeal. The appeal will be sustained.

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 Director’s decision denying the petition concludes that the Petitioner had not resolved the issues related to the *bona fide* nature of the position offered.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.

In our decision dated June 3, 2014, we withdrew the Director’s decision and concluded that the Beneficiary met the requirements of the labor certification and is qualified for the instant position. However, due to discrepancies regarding the Beneficiary’s address as stated on the Form I-140 and the labor certification, we remanded the matter to the Director to seek a resolution of these matters and determine whether a *bona fide* job offer exists. The Director issued the Petitioner an RFE and concluded that these discrepancies had not been overcome. After reviewing the Petitioner’s brief and supporting documentation on appeal, we conclude that the Petitioner has overcome the discrepancies previously noted and that it is more likely than not that the instant position is a *bona fide* job offer.

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of T-P-S-, Inc.*, ID# 12735 (AAO Nov. 16, 2015)