U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-C-, LLC

DATE: OCT. 5, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a supplier of packaging and accessories to perfume and cosmetics companies, seeks to employ the Beneficiary as an international business manager. It requests his classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* 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 U.S. businesses to sponsor foreign nationals for lawful permanent resident status if they have master's degrees, or bachelor's degrees followed by at least five years of experience.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record did not establish the Petitioner's required ability to pay the proffered wage.

On appeal, the Petitioner submits additional evidence and asserts that the Director disregarded prior proof of its ability to pay. The Petitioner also contends that the Director erroneously required it to demonstrate its ability to pay the entire proffered wage in the year of the petition's priority date, rather than only the portion that accrued after that date.[1]

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings consistent with the following opinion.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer files a labor certification application with the DOL. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL must certify that the United States lacks able, willing, qualified, and available workers for an offered position, and that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. *Id.*

[1] The petition's priority date is June 30, 2014, the date the U.S. Department of Labor (DOL) received the petition's accompanying labor certification for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

If DOL certifies an offered position, the employer must next file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves a petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In this case, the accompanying labor certification states the proffered wage of the offered position of international business manager as $84,000 per year. As previously noted, the petition's priority date is June 30, 2014.

As of the appeal's filing, required evidence of the Petitioner's ability to pay the proffered wage in 2016 was not yet available. We will therefore consider the Petitioner's ability to pay only in 2014 and 2015.

In determining ability to pay, USCIS first examines whether a petitioner paid a beneficiary a full proffered wage each year from a petition's priority date. If a petitioner did not annually pay a full wage, USCIS examines whether it generated annual amounts of net income or net current assets sufficient to pay the difference between an annual proffered wage and any wages it paid to a beneficiary. If net income and net current assets are insufficient, USCIS may also consider other factors affecting a petitioner's ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).[2]

Here, the record does not indicate any payments by the Petitioner to the Beneficiary in 2015. While this appeal was pending, however, the Petitioner filed another petition for the Beneficiary including evidence of its payments to him in 2014. Copies of four deposited checks and a bank record indicate that the Petitioner paid the Beneficiary a total of $55,000 that year. The $55,000 amount does not equal or exceed the annual proffered wage of $84,000. The record therefore does not establish the Petitioner's ability to pay the proffered wage in 2014 or 2015 based on payments to the Beneficiary.

Nevertheless, we credit the Petitioner's 2014 payments to the Beneficiary. In 2014, the Petitioner need only demonstrate its ability to pay the difference between the annual proffered wage and the

[2] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Estrada-Hernandez v. Holder*, 108 F. Supp. 3d 936, 942-43 (S.D. Cal. 2015); *Rivzi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, 627 Fed. App'x 292 (5th Cir. 2015).

amount it paid the Beneficiary, or $29,000. In 2015, the Petitioner must demonstrate its ability to pay the full proffered wage of $84,000.

In response to the Director's request for evidence (RFE), the Petitioner submitted copies of its 2014 federal income tax return. On appeal, it submitted copies of its 2015 federal tax return. The returns reflect annual net income amounts of $64,462 in 2014 and $236,781 in 2015.[3] The 2014 net income amount exceeds the difference between the annual proffered wage and the amount the Petitioner paid the Beneficiary that year. The 2015 net income amount exceeds the annual proffered wage of $84,000. The record therefore establishes the Petitioner's ability to pay in both 2014 and 2015.

The record on appeal establishes the Petitioner's ability to pay the proffered wage. We will therefore withdraw the Director's decision.

III. THE BENEFICIARY'S POSSESSION OF THE REQUIRED EDUCATION

Although the Petitioner has demonstrated its ability to pay, the record does not establish the Beneficiary's possession of the minimum education required for the offered position and the requested classification.

The Petitioner seeks to qualify the Beneficiary as an advanced degree professional based on his possession of a bachelor's degree followed by five years of progressively responsible experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree"). The labor certification states the Petitioner's acceptance of a bachelor's degree in business administration followed by five years of qualifying experience.

The Petitioner submitted a copy of the Beneficiary's *licientiado en administracion* from a Venezuelan university, indicating concentrated studies in computer science. An evaluation of his foreign educational credentials states that the *licientiado* equates to a U.S. bachelor of business administration degree, with a concentration in computer information systems.

The Petitioner also submitted a Venezuelan academic record, however, stating that the Beneficiary's university studies lasted from September 1991 to December 1993. U.S. bachelor's degrees generally reflect four years of university studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The record does not explain how the Beneficiary obtained the equivalent of a U.S. bachelor's degree by studying less than four years at the university. *See Matter of Caron Int'l, Inc.*, 19 I&N

[3] The Petitioner's returns indicate its treatment as an S corporation for federal income tax purposes. S corporations with income adjustments from sources outside their trades or businesses reconcile their income on Schedule K to IRS Form 1120S, U.S. Income Tax Return for an S Corporation. *See* U.S. Internal Revenue Serv. (IRS), Instructions for Form 1120S, https://www.irs.gov/pub/irs-pdf/i1120s.pdf (last visited Sept. 8, 2017). Because the Petitioner reported income adjustments from sources outside its business in 2014 and 2015, we consider lines 18 of its Schedules K to reflect its annual amounts of net income for those years.

Dec. 791, 795 (Comm'r 1988) (rejecting or affording lesser evidentiary weight to an educational evaluation that conflicts with other evidence or "is in any way questionable").

To learn more about Venezuelan university credentials, we consulted the Electronic Database for Global Education (EDGE). Created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), EDGE is a web-based, peer-reviewed resource that federal courts have found to reliably evaluate foreign educational credentials.[4]

EDGE states that a Venezuelan *licientiado* is comparable to a U.S. bachelor's degree. But EDGE indicates that a *licientiado* reflects a four- to five-year degree program. The record does not establish the Beneficiary's completion of four or five years of university studies. Thus, contrary to the requirements of the offered position and the requested classification, the record does not establish the Beneficiary's possession of a bachelor's degree.

Because the Petitioner was unaware of the need for additional evidence of the Beneficiary's educational qualifications, we will remand this matter for further proceedings. On remand, the Director should provide the Petitioner with a copy of the EDGE report on Venezuelan *licientiados* and afford it a reasonable opportunity to respond.

IV. THE BENEFICIARY'S POSSESSION OF THE REQUIRED EXPERIENCE

The record also does not establish the Beneficiary's possession of the minimum experience required for the offered position and the requested classification. On the labor certification, the Beneficiary attested to his possession of almost 10 years of full-time, qualifying experience as an international business manager with [redacted] in Venezuela, from October 1, 2004, to June 30, 2014. To support the claimed experience, the Petitioner submitted a letter from the Venezuelan company. *See* 8 C.F.R. § 204.5(g)(1) (requiring a petitioner to support claimed, qualifying experience with a letter from a current or former employer).

In response to an RFE on its later petition, however, the Petitioner stated: "While employed with [redacted] [the Beneficiary] became an independent distributor of [the Petitioner's] products in Latin America for which he received sales commissions." For example, as previously indicated, the Petitioner submitted copies of four checks and a bank record, indicating that it paid the Beneficiary a total of $55,000 in 2014.

Contrary to the Beneficiary's attestation on the labor certification and the letter from his former employer, however, the record does not establish his qualifying experience as an international

[4] AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* AACRAO, http://www.aacrao.org/About-AACRAO.aspx (last visited Sept. 12, 2017); *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount educational evaluations if they differ from reports in EDGE, which is "a respected source of information").

business manager from October 1, 2004, to June 30, 2014. The record indicates that the Beneficiary spent at least part of that period as an independent distributor, generating Latin American sales for the Petitioner. The record does not indicate when the Beneficiary became an independent distributor for the Petitioner. The record also does not indicate whether he performed this role on a full- or part-time basis, or explain how he did so while working full-time for

Counsel asserted that the Beneficiary "at all times was employed exclusively by in Venezuela." Counsel's assertion, however, does not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statement must be substantiated in the record with independent evidence, which may include affidavits and declarations. Moreover, counsel's assertion does not indicate when the Beneficiary began serving as an independent distributor for the Petitioner, or explain how the Beneficiary simultaneously worked full-time for *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).

On remand, the Director should ask the Petitioner to resolve the inconsistencies in the Beneficiary's claimed, qualifying experience and afford it a reasonable opportunity to respond. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

V. CONCLUSION

On appeal, the Petitioner demonstrated its ability to pay the proffered wage. The record, however, does not establish the Beneficiary's possession of the minimum education or experience required for the offered position and the requested classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of C-C-, LLC*, ID# 90818 (AAO Oct. 5, 2017)