U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-H-H-S-, INC.

DATE: JUNE 25, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a provider of home healthcare services, seeks to employ the Beneficiary as operations manager. It requests her classification under the second-preference immigrant category as a member of the professions holding an advanced degree. *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 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 and five years of experience.

After the Director of the Texas Service Center denied the petition and the Petitioner's following motion to reopen, we dismissed the company's appeal. We affirmed the Director's decision that the Petitioner did not demonstrate its required ability to pay the proffered wage of the offered position. For the same reason, we denied the company's following seven motions to reopen and reconsider. *See, e.g., Matter of C-H-H-S-, Inc.*, ID# 2380437 (AAO Jan. 2, 2019).

The matter is before us again on motions to reopen and reconsider. The Petitioner submits evidence that it forged "new relationships" with hospitals. It also argues that the timing of its revenue recognition explains fluctuations in its reported finances and that a totality of the circumstances establishes its ability to pay.

Upon review, we will deny the motions.

I. MOTION CRITERIA

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that the prior decision misapplied law or policy based on the record at that time. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate a petition's approvability.

II. THE MOTION TO REOPEN

The Petitioner must demonstrate its continuing ability to pay the position's proffered wage of $156,520, from the petition's priority date of September 22, 2010, onward. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to show that it can pay a proffered wage from a petition's

priority date until a beneficiary obtains lawful permanent residence). A statement from the Petitioner's executive vice president contains the only new facts on motion. The vice president states that the Petitioner entered into "new relationships" with three hospitals this year. The statement, however, does not detail the natures of the relationships, and the record lacks documentary evidence of their existence. Also, the Petitioner does not explain how the relationships demonstrate its ability to pay the proffered wage or alter the totality-of-the-circumstances analysis in our most recent decision. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967) (allowing adjudicators determining ability to pay to consider factors beyond wages a petitioner paid, its net income, and its net current assets).

The statement also asserts that, over its 20 years of operation, the Petitioner remained financially solvent, did not seek protection from bankruptcy, and timely and fully paid all credit card debts and vendor invoices. The record, however, lacks documentary evidence corroborating the assertions. Moreover, even assuming their truth, the achievements would not establish the Petitioner's ability to pay the proffered wage. On their own, the Petitioner's solvency and timely payment of bills would not demonstrate its possession of sufficient resources to pay additional wages. The achievements are also not significant enough to alter our totality-of-the-circumstances analysis. The statement's new facts therefore do not demonstrate the Petitioner's ability to pay the proffered wage.

Also, despite our prior requests, the motion to reopen omits the proffered wages of the Petitioner's other petitions that were pending or approved as of this petition's priority date, or filed thereafter. *See* 8 C.F.R. § 103.2(b)(14) (stating that "[f]ailure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request"). A petitioner must demonstrate its ability to pay the combined proffered wages of all its petitions that were pending or approved as of a petition's priority date. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014). In addition, the motion lacks required evidence of the Petitioner's ability to pay in 2017 or 2018. *See* 8 C.F.R. § 204.5(g)(2) (requiring evidence of ability to pay to include copies of annual reports, federal tax returns, or audited financial statements). For the foregoing reasons, the motion to reopen does not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward.

III. THE MOTION TO RECONSIDER

The Petitioner argues that the revenue and income amounts on its tax returns are "misleading." The company states that it does not receive payments until 30 to 90 days after it issues invoices, and its tax returns reflect only revenues collected in corresponding years. The Petitioner therefore contends that, depending when it issues invoices, the revenue and income amounts on its tax returns can "fluctuate" from year to year. The Petitioner, however, has not established that such fluctuations prevented it from demonstrating its ability to pay in any specific year. The Petitioner also asserts that a totality of the circumstances establishes its ability to pay. But the company has not sufficiently alleged errors in our most recent *Sonegawa* analysis.

We have previously addressed the Petitioner's remaining arguments. It contends that, to pay the proffered wage, it can draw on cash reserves of an affiliated company. As explained in our April 29, 2016, decision, however, a "prospective United States employer" must demonstrate its ability to pay a proffered wage. 8 C.F.R. § 204.5(g)(2). The record here identifies the Petitioner, not its affiliate,

as the Beneficiary's prospective employer. Therefore, in determining the Petitioner's ability to pay, we cannot consider cash reserves of its affiliate. *See Sitar Rest. v. Ashcroft*, No. Civ.A.02-30197-MAP, 2003 WL 22203713 *2 (D. Mass. May 1, 2003) (holding that "nothing in the governing regulation, 8 C.F.R. § 204.5, permits the [immigration service] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage"). Also, noting that it need not pay the Beneficiary the proffered wage until she obtains lawful permanent residence, the Petitioner argues that its lesser payments to her do not warrant the petition's denial. As explained in our most recent decision, however, the Petitioner's lesser payments to the Beneficiary, while not a denial ground, do not excuse the company from demonstrating its ability to pay the proffered wage from the petition's priority date onward. 8 C.F.R. § 204.5(g)(2). For the foregoing reasons, the motion to reconsider does not demonstrate the Petitioner's ability to pay the proffered wage.

IV. CONCLUSION

The Petitioner's motions contain neither new facts nor arguments demonstrating its continuing ability to pay the proffered wage from the petition's priority date onward. A petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act; 8 U.S.C. § 1361. Here, the Petitioner did not meet that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-H-H-S-, Inc.*, ID# 4878923 (AAO June 25, 2019)