U.S. Citizenship and Immigration Services

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

In Re: 21104821

Date: FEB. 22, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a pharmaceutical business, seeks to employ the Beneficiary as a project manager – controlled substance development and production. It requests his classification as a professional worker under the third preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's ability to pay the proffered wage. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the beneficiary 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.

Here, although the Director accepted the Petitioner's Form I-140, Immigrant Petition for Alien Worker, for processing and adjudicated it on its merits, the record reflects that the petition was not properly filed as it was not accompanied by a valid labor certification, as required by 8 C.F.R. § 204.(a)(2) and (l)(3)(i). *See also* 20 C.F.R. § 656.17(a)(1) (stating that the Department of Homeland Security will not process a labor-certification-based immigrant petitions unless it is supported by an

original certified ETA 9089 that has been signed by the employer, the beneficiary, and, if applicable, the attorney).

The Petitioner stated on the Form I-140 at Part 5 that the Labor Certification DOL Case Number associated with this petition is [redacted]. The original labor certification in the record of proceeding consists of:

- A DOL letter dated August 3, 2015, indicating that the Form ETA 9089 with case number [redacted] had been certified. The letter includes the Beneficiary's name and the job title for the offered position.
- Pages 1-6 and pages 11-13 of the Form ETA 9089 with case number [redacted], indicating the labor certification's validity from August 3, 2015 to January 30, 2016.
- Pages 7-10 of a different Form ETA 9089, with case number [redacted] indicating the labor certification's validity from July 27, 2015 to January 23, 2016.

As a result of the Petitioner's submission of pages from two different labor certifications, the record does not contain the original, complete labor certification associated with this immigrant petition.[1]

Further, the partial labor certification the Petitioner provided for ETA case number [redacted] does not contain a valid Part L., Alien Declaration, signed and dated by the Beneficiary of this petition,[2] a valid Part M., Declaration of Preparer, or a valid Part N., Employer Declaration. These sections of the labor certification require the employer, beneficiary and attorney to make signed declarations and attestations under penalty of perjury, and such signatures are critical to the validity of the labor certification. *See* 20 C.F.R. § 656.17(a)(1). The signed declarations submitted (on pages 9 and 10 of the ETA 9089 with case number [redacted]) relate to a different labor certification filed on behalf of a different beneficiary for a different job offer within the petitioning company.

Because this immigrant petition was not accompanied by a valid labor certification, it was not properly filed. The Director erred by accepting the petition for processing and adjudicating it on its merits. *See* 8 C.F.R. § 204.5(a)(2) and (l)(3)(i), 20 C.F.R. § 656.17(a)(1); *see generally* 6 *USCIS Policy Manual* E.6(B)(1), https://www.uscis.gov/policy-manual (stating that USCIS will reject a petition that is filed without the approved permanent labor certification and will deny a petition that was inadvertently accepted without a required, valid permanent labor certification).

Although the Petitioner has submitted an appellate brief and evidence addressing its ability to pay the proffered wage, we will not adjudicate the merits of the appeal in the absence of a properly filed petition. Rather, we will withdraw the Director's decision and remand the matter to the Director for further action and entry of a new decision.

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[1] The Petitioner submitted copies of these documents in support of this petition. *See generally* 6 *USCIS Policy Manual* E.6(B)(2), https://www.uscis.gov/policy-manual (permitting the submission of a copy of an expired labor certification in certain circumstances). The original labor certification was submitted with a prior immigrant petition the Petitioner filed on behalf of the Beneficiary in November 2015, seeking to classify him as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. USCIS approved that petition on March 23, 2016 [redacted], despite the lack of a complete and valid labor certification.

[2] While Part L has been signed, it was not signed by the Beneficiary of this petition.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.