U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 01003195

Date: MAY 26, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Alien Worker

The Petitioner, a poultry processing business, seeks to employ the Beneficiary as a poultry processing worker. It requests classification of the Beneficiary as an "other worker" under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(B)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor for lawful permanent residence a foreign national who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The Director of the Texas Service Center denied the petition. The Director determined that the Petitioner was receiving free recruitment and other services on behalf of the Beneficiary during the labor certification process as a result of the Beneficiary's payments for such services to a recruiting company. The Director concluded that the Petitioner did not establish that the proffered position was a *bona fide* job offer open to U.S. workers.

On appeal the Petitioner asserts that it directly paid all required costs for the labor certification process and did not violate the regulation at 20 C.F.R. § 656.12(b) relating to "Improper Commerce and Payment" during the labor certification process.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The burden is on the petitioner in visa petition proceedings to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of the evidence that the beneficiary is fully qualified for the benefit sought. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). To establish its eligibility for the immigration benefit it seeks under the preponderance of the evidence standard, the petitioner must submit sufficiently probative and credible evidence to establish that its claim is "more likely than not" or "probably" true. *See Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

With respect to the basis for the Director's decision, the Petitioner's assertions on appeal are persuasive. The Petitioner must prove eligibility by a preponderance of evidence, such that the applicant's claim is "probably true" based on the factual circumstances of each individual case. *Matter of Chawathe*; *Matter of E-M-*. Upon *de novo* review, we determine that the Petitioner has established,

by a preponderance of the evidence, that the proffered position was a *bona fide* job opportunity open to U.S. workers and that applicable regulations were not violated in the labor certification process. Accordingly, we will withdraw the Director's decision.[1]

We will remand the case for adjudication within the statutory and regulatory framework for I-140 immigrant visa petitions.

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

[1] We recognize that that the Director raised significant if somewhat speculative concerns. While not sufficiently developed for purposes of this visa petition, the Director is not barred from further inquiry, investigation, or the development of questions for consular processing or adjustment of status proceedings. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959) (stating that the immigrant visa petition is not the appropriate stage of the process for questions regarding admissibility).