



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

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

In Re: 14442576

Date: JUN. 2, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a jewelry store operator, seeks to employ the Beneficiary as assistant shift manager. The company requests her classification under the third-preference, immigrant visa category for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner falsely concealed a personal relationship between a company owner and the Beneficiary, barring the petition's approval.

In revocation proceedings, the Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted) (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). 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.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a 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.

“[A]t any time” before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition’s approval for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. If supported by a record, the erroneous nature of a petition’s approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition’s approval if the unexplained and unrebutted record at the time of the notice’s issuance would have warranted the petition’s denial. *Matter of Esteime*, 19 I&N Dec. 450, 451 (BIA 1987). If a NOIR response does not rebut or resolve the alleged revocation grounds, USCIS properly revokes a petition’s approval. *Id.* at 451-52.

II. THE ALLEGED MISREPRESENTATION

The Director found that, on the accompanying labor certification application, the Petitioner falsely concealed a friendship between the Beneficiary’s father-in-law and the company owner who signed the petition and certification. As currently constituted, the record does not support revocation on this basis. We will therefore withdraw the Director’s decision.

Evidence, however, indicates that the signatory of the petition and labor certification is not the sole owner of the petitioning corporation. A copy of the Petitioner’s federal income tax return for 2016, the most recent of record, indicates the company’s ownership by three, unidentified shareholders. The record does not indicate whether the Beneficiary is related to any of the shareholders. On remand, the Director may wish to request additional evidence regarding this issue.

III. THE BENEFICIARY’S QUALIFICATIONS

Although unaddressed by the Director, the record at the time of the NOIR’s issuance did not demonstrate the Beneficiary’s minimum qualifications for the offered position or the requested immigrant visa category. A skilled-worker position must require at least two years of training or employment experience. Section 203(b)(3)(A)(i) of the Act. “Relevant post-secondary education” may count as training. 8 C.F.R. § 204.5(l)(2) (defining the term “skilled worker”). A petitioner must also demonstrate a beneficiary’s possession of all DOL-certified job requirements of a position by a petition’s priority date. *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977).¹

In evaluating a beneficiary’s qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position’s minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that “DOL bears the authority for setting the *content* of the labor certification”) (emphasis in original).

The labor certification states the minimum requirements of the offered position of assistant shift manager as a U.S. associate degree, or a foreign equivalent degree, in business administration. The

¹ This petition’s priority date is May 9, 2017, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

labor certification states that the Petitioner will not accept a degree in an alternate field of study. The certification also indicates that the position requires neither training nor employment experience.

On the labor certification application, the Beneficiary attested that, by the petition's priority date, a Pakistani university awarded her an associate degree in business administration. The Petitioner submitted copies of a "Bachelor of Commerce" diploma and an accompanying transcript from the university. The company also provided an independent, professional evaluation of the foreign credential, stating its equivalency to a U.S. associate degree.

The record did not establish the degree's issuance in the required field of study. The Petitioner indicated on the labor certification application that the offered position requires a degree in "business administration." Asked on the application "Is there an alternate field of study that is acceptable?" the Petitioner marked "No." The diploma submitted by the Petitioner identifies the degree as a "Bachelor of Commerce" from the university's faculty of "Management & Administrative Sciences." The transcript indicates the Beneficiary's studies at a college of "Commerce & Economics." The university documents do not mention the term "business administration." The record therefore did not establish the degree's issuance in the requisite field of study.

Also, the record did not establish the Beneficiary as the degree's recipient. The recipient's name on the diploma and transcript differs from that of the Beneficiary listed on the Form I-140 petition and accompanying labor certification. A copy of the Beneficiary's marriage certificate explains the difference in her last name. But the university documents and marriage certificate reflect a different first name than indicated on the petition, labor certification, and birth certificate. The discrepancy in the Beneficiary's first name casts doubt on her claimed receipt of the Pakistani degree. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

For the foregoing reasons, the Petitioner did not demonstrate the Beneficiary's qualifications for the offered position or the requested immigrant visa category. We will therefore remand the matter. On remand, the Director should issue a new NOIR explaining the evidentiary deficiencies and requesting additional proof of the Beneficiary's qualifications.

IV. ABILITY TO PAY THE PROFFERED WAGE

The record at the time of the NOIR's issuance also did not establish the Petitioner's ability to pay the proffered wage of the offered position. 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 generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

The labor certification states the proffered wage of the offered position of assistant shift manager as \$45,219 a year. As previously noted, the petition's priority date is May 9, 2017. Thus, at the time of the petition's approval in August 2017, the Petitioner had to demonstrate its ability to pay the proffered wage in 2017.

The Petitioner submitted a copy of its federal income tax return for 2016. The record, however, lacks regulatory required evidence of the company's ability to pay in 2017, the year of the petition's priority date. Thus, on remand, the new NOIR should ask the Petitioner to provide copies of an annual report, federal tax return, or audited financial statements for 2017. The Petitioner may also submit additional evidence of its ability to pay, including proof of any wages it paid the Beneficiary that year or documentation supporting the factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

If supported by the record, the new NOIR may include additional potential revocation grounds. The Director, however, must afford the Petitioner a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

V. CONCLUSION

The record does not support the Director's revocation of the petition's approval. The Petitioner, however, did not demonstrate its ability to pay the proffered wage of the offered position or the Beneficiary's qualifications for the position and the requested immigrant visa category.

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