U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43520137

Date: AUG. 3, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, an operator of a traditional Russian-style bathhouse, seeks to employ the Beneficiary as a "wellness and rejuvenation coordinator." The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years' training or experience. *Id.*

U.S. Citizenship and Immigration Services (USCIS) denied the petition. The Acting Associate Director of Service Center Operations concluded that the Petitioner did not demonstrate the Beneficiary's qualifying employment experience for the offered job. On appeal, the Petitioner contends that the Director mischaracterized evidence and disregarded the company's arguments.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the company has not sufficiently established the Beneficiary's claimed qualifying experience. We will therefore dismiss the appeal.

I. LAW

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

Second, a prospective employer must submit a DOL-approved labor certification with an immigrant visa petition to USCIS. *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B).

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.

II. ANALYSIS

A petitioner must demonstrate a beneficiary's possession of all DOL-certified requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is December 21, 2023, 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).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer section of an accompanying labor certification to determine the offered job's minimum requirements. USCIS may neither ignore a labor certification term nor impose unstated 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 job-offer section of the Petitioner's labor certification refers to job requirements listed on the company's previously filed application for prevailing wage determination (PWD).[1] The PWD lists the minimum requirements of the offered job of wellness and rejuvenation coordinator as: a U.S. high school diploma or its foreign equivalent; three months' training; and three years' experience. The PWD states that qualifying training consists of "[a]ny educational courses on the traditional Russian banya[2] as long as training includes the administration of traditional banya procedures (including aromatherapy and phytotherapy)." Qualifying experience includes experience as a "Wellness and Relaxation Specialist, Wellness and Relaxation Coordinator or any other occupation which makes one intimately familiar with the traditional Russian banya practices and procedures."

The PWD also states that the offered job requires the following "Special Skills or Other Requirements:"

- High level of familiarity with the traditional Russian banya practices (including both hot- and cold-water procedures);
- Good knowledge of the traditional Russian banya aromatherapy practices;
- Good knowledge of the traditional Russian banya phytotherapy practices;
- Skilled at making body scrubs from natural components traditionally used in the traditional Russian banya culture (salt, honey, kefir, oats, etc.);
- Skilled at making from scratch essential oils use in the traditional Russian banya culture and incorporating them into aromatherapy procedures; and
- Skilled at making Russian banya veniks (sauna whisks) from natural components traditionally used in the traditional Russian banya culture (birch, oak, linden, alder, eucalyptus, etc.)

[1] Effective June 1, 2023, DOL required petitioners to electronically file permanent labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089. DOL no longer uses Form ETA-9089 to collect information about the minimum requirements of the job opportunity. Instead, employers now provide that information on the Application for Prevailing Wage Determination (Form ETA-9141). *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual.

[2] The record shows that the word "banya" refers to a Russian-style steam bath.

On the labor certification, the Beneficiary attested that, by the petition's December 21, 2023 priority date, he gained more than four years' full-time qualifying experience at bathhouses in his home country of Russia, from January 2017 through June 2022. Specifically, he claimed the following experience:

- About one year and nine months as an assistant bathhouse master at [redacted] from January 2017 to October 2019, 40 hours per week;
- About one year and five months as a junior bathhouse specialist at [redacted], from November 2019 to April 2021, 40 hours per week; and
- About one year and two months as a lead bathhouse specialist at [redacted] from April 2021 to June 2022.[3]

As proof of the Beneficiary's purported qualifying experience, the Petitioner submitted a copy of his employment record book. The employers listed in the book from January 2017 through June 2022 generally match those listed on the labor certification with one exception as noted. The employment record book states that the Beneficiary worked as an:

- assistant bath master for [redacted] from January 10, 2017 to October 3, 2019;
- as a junior bath specialist at public bathhouse [redacted] from November 3, 2019 to April 3, 2021; and
- chief bath specialist at [redacted] from April 10, 2021 to June 8, 2022.[4]

The book also indicates that, since June 2022, the Beneficiary has worked as the master of another private Russian bathhouse.[5]

The Director sent a request for additional evidence (RFE) to the Petitioner, explaining that the record lacked acceptable evidence of the Beneficiary's claimed qualifying experience. To establish qualifying experience, a petitioner must submit letter(s) from a beneficiary's former or current employers stating the employers' names, addresses, and titles, and describing the experience. 8 C.F.R. § 204.5(l)(3)(ii)(A). In its RFE response, the Petitioner provided letters from the four Russian

[3] On the labor certification, the Beneficiary also stated that, from May 2015 to December 2016, he worked as a commercial director of another Russian banya. His employment record book ("trudovaya knizhka"), issued by the Russian government, confirms this employment. But the Petitioner did not submit a required letter from this former employer to verify the employment and, on appeal, does not claim this employment as qualifying experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring petitioners to submit letters from beneficiaries' former employers). Thus, we will not consider the employment as qualifying experience.

[4] The employment book appears to indicate that the Beneficiary also worked additional part-time jobs for some of the bathhouses where he worked full-time. The labor certification does not list this additional employment. In any future filings in this matter, the Petitioner must explain the additional part-time employment listed in the employment book.

[5] The instructions to the labor certification's appendix directed the Beneficiary to "[i]dentify any relevant employment experiences (other than training) that qualify the foreign worker for the job opportunity for which the employer is seeking permanent labor certification." DOL, Instructions for Form ETA-9089, www.dol.gov/agencies/eta/foreign-labor/forms. On the appendix, however, the Beneficiary did not list his purported post-June 2022 work at the private Russian bathhouse. The Beneficiary has not explained why he omitted this employment from the labor certification application. We therefore find insufficient evidence to credit this claimed qualifying experience. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976), *disapp'd of on another ground by Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (not crediting a qualifying experience claim where the alien did not list the purported employment on the labor certification application on his behalf).

bathhouses where the Beneficiary's employment record book indicates he had worked from January 2017 through the petition's December 21, 2023 priority date.[6]

After reviewing the Petitioner's RFE response and conducting additional research, the Director sent the company a notice of intent to deny (NOID) the petition. The NOID stated that the employment verification letters from the Russian bathhouses conflict with information that the Beneficiary listed on his U.S. visitor visa applications in 2021 and 2024. The NOID noted that the 2021 application listed the Beneficiary's then-current employer as a Russian medical examination center for which he purportedly began working in 2015. The 2024 visa application identified his then-current employer as another Russian medical company for which he purportedly began working in 2005. None of the current or former employers listed on the visa applications included any of the Russian bathhouses.

The NOID also noted the Beneficiary's frequent travel to the United States during his stated employment periods at the Russian bathhouses. According to USCIS records, between January 2017 and the petition's December 21, 2023 priority date, the Beneficiary spent significant time in the United States, including a 322-day period from March 2020 to February 2021 when he claimed to be working for [redacted]

The NOID asked the Petitioner to explain why the employers listed on the Beneficiary's visitor visa applications did not match any of the Russian bathhouses that provided letters. The NOID also asked the company to address how the Beneficiary had worked for the bathhouses as assistant bath master and bath specialists while he was in the United States and traveling to or from the country. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

The Petitioner's NOID response included a written statement from the Beneficiary. He stated that he has maintained "two concurrent professional roles in Russia:" 1) providing financial management services to medical organizations as an independent contractor on a remote basis; and 2) working on-site as a master and wellness specialist for the bathhouses. The Beneficiary claimed his employment working in bathhouses on the labor certification as full-time positions. He stated that he listed financial management as his employment on the visitor visa applications because he generates most of his income from that job and it best demonstrated his ability to financially support himself and his ties to Russia, which he understood to be important factors in granting the visitor visas.

The Beneficiary also stated that he frequently travels to the United States to see his two children, who were born and live in the country with their mother.[7] He stated: "Each trip was made during periods of approved leave from my employer." He said that, under Russian law, he receives 51 days of unpaid leave a year, including: 28 days of basic leave; 16 additional days because he works in a far northern region of the country; and seven more days because he performs physical labor in high temperatures. He stated: "I remained an employee in good standing with each employer throughout my periods of approved leave. My employment was never terminated due to travel, and I returned to work after each

[6] The labor certification lists a different address for the bathhouse where the Beneficiary worked from November 2019 to April 2021 than stated on that employer's letter. In any future filings in this matter, the Petitioner should explain the discrepancy.

[7] Government records show that, on the Beneficiary's visa applications in 2021 and 2024, he disclosed the statuses and residences of his two U.S. citizen children in the United States.

trip as documented in employer records." He submitted copies of: letters and other documents from the bathhouses regarding his leaves; a certificate and copy of a contract from one of the medical organizations for which he provided financial management services; and U.S. birth certificates of his two children.

On appeal, the Petitioner argues that the Beneficiary has the qualifying experience for the offered job because the company demonstrated that he remained employed during his visits to the United States. The company states: "A person may remain employed full-time and take extended approved leave."

USCIS generally considers periods of full-time qualifying experience to include typical amounts of vacation time or other authorized leave. But, where a beneficiary has taken extended periods of leave during which they have not performed the duties of their applicable job, we decline to include those periods within full-time qualifying experience.

Here, USCIS records show that the Beneficiary spent 1,300 of the 2,546 days between January 1, 2017 and the petition's December 21, 2023 priority date in the United States, including almost a one year time period during a claimed time period of full-time bathhouse experience. In 2020 and 2022, he was in the country more often than not. He stated that, while he performs the duties of his financial management job remotely, his bathhouse work is "on-site." Thus, we decline to find that all of the Beneficiary's employment time from January 2017 through December 21, 2023 constitutes qualifying experience working in Russian bathhouses.

Also, the record does not support the claim of the Petitioner and Beneficiary that his employers approved all his periods in the United States as leave. USCIS records indicate that, in each year from 2017 through 2023, he spent more than 51 days in the United States. The Petitioner's evidence does not show that his employers approved leave for all his time in this country. For example, for the 322-day period that the Beneficiary spent in the United States from March 22, 2020 to February 7, 2021, the evidence shows that only 31 days – March 23, 2020 to March 27, 2020 and January 11, 2021 to February 7, 2021 – constituted approved leave. These unexplained discrepancies cast doubt on the claim of the Petitioner and Beneficiary. *See Matter of Ho*, 19 I&N Dec. at 592 (requiring petitioners to resolve inconsistences of record).

The Petitioner further argues that, even subtracting the Beneficiary's 1,300 days in the United States between January 2017 and December 2023, he remained working at the bathhouses in Russia for more than the requisite three years.

The Petitioner's argument, however, assumes that the Beneficiary spent his time only in Russia and the United States. The company did not submit copies of pages in the Beneficiary's passport or other evidence that he remained in Russia during his periods outside the United States.[8]

The Petitioner submits additional evidence on appeal, including Russian government pension records that the company says establish the Beneficiary's claimed employment by the Russian bathhouses. The record, however, shows that the Director's NOID provided the company an opportunity to provide

[8] Without full passport records, we cannot adequately determine the Beneficiary's full travel history to determine whether he remained in Russia during his time periods outside the United States.

such evidence. The company does not claim that the materials were previously unavailable. Thus, we decline to consider the evidence on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (citation omitted) (declining to consider new evidence on appeal where a petitioner received notice of the required evidence and a reasonable opportunity to provide it); *see also* 8 C.F.R. § 103.2(b)(11) (requiring submission of all evidence in response to a RFE or NOID together at one time).

Also, the Petitioner has not documented the Beneficiary's purported "high level of familiarity" with both hot- and cold-water procedures, one of the "special skills" required by the PWD. None of the letters from the Russian bathhouses or the Beneficiary's training certificates mentions this particular skill.[9]

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary gained the requisite three years' of qualifying experience for the offered job. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

[9] Although unaddressed by the Director, the Petitioner also did not provide a copy of the Beneficiary's claimed high school diploma or other evidence that he satisfied the offered job's educational requirement. In any further filings in this matter, the company must submit proof that he meets the job's educational requirement.