U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43713047

Date: AUG. 5, 2026

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

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

The Petitioner operates a bakery and seeks to employ the Beneficiary as a bakery/store manager. The company requests his classification under the employment-based, third-preference (EB-3) 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 experience for the offered job. On appeal, the Petitioner contends that the Director's inquiries into inconsistencies in the Beneficiary's employment history exceed the scope of the petition's adjudication.

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 established the Beneficiary's qualifying experience for the offered job. We will therefore dismiss the appeal.

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective U.S. 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. The Offered Job's Required Experience

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 February 12, 2024, 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 portion 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 a prevailing wage determination (PWD).[1] The PWD states the minimum requirements of the offered bakery/store manager job as an associate's degree in business, economics, management, or "any related field," plus three years' full-time experience in "[a]ny title/occ[upation] re: retail sales management, business development management, client relations management or related management/supervisory experience."[2] Further, in its "Other Special Skills or Requirements" section, the PWD stated: "This position also requires education/experience in: MS Office suite (Word and Excel), strategic business planning, supply chain management, people management, and financial reporting (profit/loss analysis, sales reports, etc.)"

On the labor certification, the Beneficiary attested that, by the petition's priority date, he gained more than three years of qualifying experience. He stated that he worked full-time as a chief executive officer (CEO) of a company in the Philippines from December 2015 to October 2019. Without listing additional experience on the labor certification, he indicated that, since November 2019, he "continued in the same position working remotely in a consulting capacity." The labor certification does not list any other experience, and the Beneficiary did not indicate whether, since November 2019, he has worked for the Philippine company on a full- or part-time basis.

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[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, Application for Permanent Employment Certification. *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual. 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). *Id.*

[2] Unless a labor certification specifies otherwise, qualifying experience means full-time experience. *Matter of Boodell & Domanskis, LLC*, 2012-PER-01275, *3 (BALCA May 11, 2016).

Part-time experience can constitute qualifying experience. But, for labor certification purposes, part-time experience does not fully equate to full-time experience. For example, an alien who worked 25 hours a week for 29.5 months gained the equivalent of 18.4 months of full-time experience. (25 hours per week/40 hours per week = 0.625, and 0.625 x 29.5 months = 18.4 months). *Matter of I Grand Express*, 2014-PER-00783, at *4 (BALCA Jan. 26, 2018).

To demonstrate qualifying experience, a petitioner must generally submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must include the employer's name, title, and address, and describe the beneficiary's experience. *Id.*

The Petitioner submitted a February 2024 letter from an administrative assistant at the Philippine company, stating that the company has continuously employed the Beneficiary since December 11, 2015. The letter states that he worked full-time as CEO from December 11, 2015 to October 31, 2019 and that, since November 1, 2019, he has "continued in the same position, working remotely in a consulting capacity."

Like the labor certification, the Philippine company's letter does not specify whether, since November 2019, the Beneficiary has worked for the business on a full- or part-time basis. But, consistent with the offered job's requirements listed on the PWD, the letter states that the Beneficiary's CEO duties include "business development management" and "client relations management." The letter also states that he further gained experience with the technologies and skills listed in the PWD's "Other Special Skills or Requirements" section.

The Director sent a request for additional evidence (RFE) to the Petitioner, notifying the company of inconsistencies in the Beneficiary's employment history. As previously indicated, the labor certification and the letter from the Philippine company indicate that the Beneficiary started working for the company in December 2015. The RFE, however, noted that, on an October 2024 application for a U.S. nonimmigrant treaty investor visa, *see* section 101(a)(15)(E) of the Act, 8 U.S.C. § 1101(a)(15)(E), the Beneficiary stated that the Philippine company did not begin employing him until December 1, 2018, not in December 2015 as claimed on the labor certification. *See Love Korean Church v. Chertoff*, 549 F.3d 749, 754 (9th Cir. 2008) (citing *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).

If the Beneficiary did not begin working for the Philippine company until December 2018, he could not have gained the requisite three years of full-time, qualifying experience with the company by October 2019 as he claims. The labor certification and the company's letter state that, since November 2019, he has continued to work for the business in a consulting capacity. But, because the record does not indicate how many hours a week he worked for the company between November 1, 2019 and the petition's February 12, 2024 priority date, the Petitioner would not demonstrate that the Beneficiary gained the requisite qualifying experience by the petition's priority date.

The Petitioner's RFE response included a sworn declaration from the Beneficiary. He reiterated that he worked for the Philippine company as CEO from December 2015 to October 2019 on a full-time basis. He said that his 2024 visa application incorrectly listed his start date as December 2018 "for unknown reasons." The Beneficiary stated:

> As in the previous ... visa applications, I was assisted by legal professionals who prepared and submitted my ... application for me. I might have been confused when I reviewed the application and failed to catch the errors before they were submitted.

The Petitioner's RFE response also provided evidence about the Philippine company and the Beneficiary's affiliation with it, including: corporate documentation; e-mail messages; and letters. The materials show that, in December 2015, the Beneficiary helped found the company, which operates a fuel transport business. The evidence identifies him as a company incorporator, director, and shareholder, and lists him as the business's CEO through October 2019 and thereafter. But the materials fall short of demonstrating his full-time, qualifying experience for the offered job.

The Beneficiary and the letter from the Philippine company state that, from December 2015 through October 2019, he served as the business's CEO on a full-time basis. But he also stated in his declaration, and the Petitioner submitted evidence that, from December 2015 through December 2017, he concurrently worked for a U.S. welding supply company as a contracted consultant. The Beneficiary did not list this employment on the labor certification. But a copy of his agreement with the U.S. company indicates that he assisted the business in sales, marketing, and business development in the Philippines and other Pacific rim countries and "[t]ravel[ed] frequently." In exchange, he received monthly payments of $5,060 (or $60,720 a year), plus travel, entertainment, and office expenses and additional potential incentives of up to $6,600.

The agreement also suggests that the U.S. company expected the Beneficiary to consult for it on a full-time basis. The agreement states:

> Consultant acknowledges that such performance will require that he devote full time, attention, and efforts (except for absences due to temporary illness and up to two weeks of mutually agreed vacation each year) to providing the Services during the term of this Agreement. During the term of this Agreement, Consultant shall not engage in any other business activity which, in the reasonable judgment of [the company], conflicts with the duties of Consultant hereunder, whether or not such activity is pursued for gain, profit or other pecuniary advantage.

The agreement required the Beneficiary to maintain a complete and accurate record of the services he provided under the agreement, "including the hours worked by Consultant." The Petitioner, however, did not submit such a record.

Also, in his sworn declaration, the Beneficiary suggested that he did not initially work for the Philippine fuel transport company on a full-time basis. He stated:

> At the outset of operations, the company employed a driver and an assistant who performed the day-to-day operational tasks. In my capacity as CEO, I was responsible for defining the company's objectives, making financial and strategic decisions, and securing business through my professional network. During the initial phase of operation, the company served a limited number of customers, which allowed me to continue fulfilling my consulting responsibilities at [the U.S. company] while simultaneously managing [the Philippine company].

Further, USCIS records and another nonimmigrant visa application for the Beneficiary in 2019 indicate that he remained in the United States for 323 consecutive days from April 30, 2018 to March 19, 2019. The Petitioner has not explained how the Beneficiary worked full-time as the Philippine company's CEO while he remained in the United States for almost a year from April 2018 to March 2019.

The record shows that, during the period between December 2015 and October 2019, the Beneficiary spent almost a year in the United States and, for part of the period, concurrently worked for two companies, one of which was not disclosed on the labor certification. Other evidence also contradicts the Beneficiary's stated start date with the Philippine company. Thus, the record does not sufficiently demonstrate that he gained the requisite three years of full-time, qualifying experience with the Philippine company. *See Advanced Cabinets Corp. v. Mayorkas*, No. 19 C 5930, 2021 WL 825608, at *4 (N.D. Ill. Mar. 4, 2021) (affirming USCIS' finding that a petitioner did not demonstrate a beneficiary's full-time, qualifying experience because of unresolved discrepancies in her employment history).

The Beneficiary stated that, since November 2019, he has continued to work remotely for the Philippine company from the United States, providing the same CEO duties. But he also said that, since November 2019, he has worked full-time for another U.S. company. He stated:

> In 2018, I acquired a business in the United States. In November 2019, I entered the United States under an E2 [nonimmigrant treaty investor] visa for the purpose of directing and developing my U.S. business. I have been an E2 nonimmigrant since then. As my E2 business requires my full time and attention, I have been serving [the Philippine fuel transport company] remotely and on a limited capacity. I have retained oversight and primary decision-making authority as CEO and Chairman of the Board of [the Philippine company], but with reduced duties and responsibilities given my absence [from the Philippines].

Also, the Beneficiary stated that, before entering the United States in November 2019, he established another Philippine company that supplies tools, equipment, and accessories to the semi-conductor and automotive industries. As with his Philippine fuel transport business, he stated: "I have been performing my role as CEO and Chairman of the Board remotely and on a consulting capacity." The Beneficiary did not list these two additional companies on the labor certification, nor did he indicate how many hours a week he works for the second Philippine company.

The Petitioner has not demonstrated how many hours a week the Beneficiary worked for the Philippine fuel transport company from November 2019 to the petition's February 12, 2024 priority date. Thus, the Beneficiary's post-November 2019 work does not establish his possession of the requisite three years of full-time, qualifying experience.

B. The Petitioner's Appellate Arguments

We agree with the Petitioner that the Director did not sufficiently detail the basis of her decision. Under our de novo appellate jurisdiction, however, we have reviewed the entire record anew and explained in detail why we believe the Petitioner's evidence does not establish the Beneficiary's

claimed qualifying experience. Thus, the Director's conclusory decision did not prejudice the company. *See Zamorano v. Garland*, 2 F.4th 1213, 1228 (9th Cir. 2021) (finding harmless error where an alien claimed that the Board of Immigration Appeals (BIA) failed to address one of his appellate arguments); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

The Petitioner also contends that the Director "erroneously denied the petition in going beyond the scope of the Form I-140[, Immigrant Petition for Alien Workers,] adjudication." The company states:

> The issue in this case is not whether the beneficiary misrepresented his employment information in [his nonimmigrant visa applications], but whether the petitioner has established that the beneficiary has the required work experience to qualify for the proffered job. The Service's inquiry into the beneficiary's reason for providing inconsistent information in his previous [visa applications] and denying the petition because it was not satisfied with the explanation, without disputing the relevance and weight of the evidence submitted to establish the beneficiary possesses the required experience to qualify for the job, is clearly beyond the scope of the petition's adjudication.

Contrary to the Petitioner's contention, the inconsistences in the Beneficiary's employment history relate to his claimed qualifying experience for the offered job. Faced with inconsistent statements regarding the Beneficiary's employment dates and hours worked with current and concurrent employers, the Director properly considered the Beneficiary's explanations for the inconsistencies. The record does not sufficiently support the Director's finding that the Beneficiary "provided false information willfully" about his employment dates with the U.S. welding supply company. *See Espinoza-Espinoza v. Immigr. & Naturalization Serv.*, 554 F.2d 921, 925 (9th Cir. 1977) (holding that willfulness means deliberate and voluntary); *see also Matter of Valdez*, 27 I. & N. Dec. 496, 498 (BIA 2018). We will therefore withdraw that finding. But, as previously indicated, we have explained in detail why we believe the Petitioner's evidence does not establish the Beneficiary's claimed qualifying experience.

The Petitioner questions "how the single inconsistency" on the Beneficiary's 2024 visa application regarding his start date with the Philippine fuel transport company "outweighed all the evidence" indicating that he has worked for the company since December 2015.

The Petitioner's evidence, however, does not specifically document the Beneficiary's claimed full-time, qualifying experience with the Philippine company. Most of the evidence documents the company's establishment in December 2015 and the Beneficiary's listing as the company's CEO. But there was little corroborating evidence that he continuously worked full-time for the company between December 2015 and October 2019.

Moreover, the inconsistency on the 2024 visa application was not the only evidence casting doubt on the Beneficiary's claimed full-time qualifying experience with the Philippine company. As previously discussed, for part of his tenure as the company's CEO from December 2015 to October 2019, the Beneficiary also worked for the U.S. welding supply company. His 2017 contract with the U.S. company indicates that he worked "full time" for the business, casting doubt on his claim that he also

worked full-time during the period for the Philippine company. Also, in his sworn statement, the Beneficiary suggested that his initial employment with the Philippine fuel transport company was not full-time in nature. He stated that the Philippine company "served a limited number of customers," allowing him to work for the U.S. company at the same time. Further, USCIS records and the Beneficiary's 2019 nonimmigrant visa application indicate that he remained in the United States for almost a year from April 2018 to March 2019.

The Petitioner argues that, even if the Beneficiary did not gain the requisite full-time qualifying experience with the Philippine fuel transport company, the record shows that he gained qualifying experience with other prior employers. The Petitioner points to evidence that the Beneficiary worked about 10 years for the U.S. welding supply company and, before that, as a manager with a Philippine company for about 10 years.

But the general instructions to the labor certification application form 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, "Forms," www.dol.gov/agencies/eta/foreign-labor/forms. (emphasis added). The Petitioner has not explained why the labor certification omitted his purported qualifying experience with his prior employers. *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) (finding that an adjustment of status applicant did not credibly testimony to qualifying experience that was omitted from his labor certification). The omission of the prior employment therefore casts doubt on the additional claimed qualifying experience.

Citing *Wing's Tea House*, the Petitioner argues that "experience gained at prior employers may be submitted to demonstrate a beneficiary's qualifications, even if not listed on the [accompanying labor certification]." *Wing's Tea House*, however, does not support the company's argument. There, a petitioner asked DOL to recertify a labor certification application because the alien did not qualify for the offered job at the time of the application's filing. *Matter of Wing's Tea House*, 16 I&N Dec. at 159. DOL advised the petitioner that recertification was unnecessary and that the labor certification remained valid even if the alien did not qualify for the job at the time of the labor certification application's filing. *Id.* The Acting Regional Commissioner, however, held that a beneficiary must qualify for an offered job by the time of a labor certification's filing. *Id.* at 160. Thus, *Wing's Tea House* does not address qualifying experience based on prior employment omitted from a labor certification and therefore does not help the Petitioner.

C. Ability to Pay the Proffered Wage

Although unaddressed by the Director, the Petitioner also did not demonstrate its ability to pay the offered job's proffered wage. A petitioner must establish its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of a petitioner's annual reports, federal tax returns, or audited financial statements. *Id.*; *see generally* 6 *USCIS Policy Manual* E.4(A)

("[T]he petition must include copies of the petitioner's annual reports, federal tax returns, or audited financial statements for each available year from the priority date.")[3]

As proof of its claimed ability to pay the proffered wage, the Petitioner submitted a copy of its federal income tax return for 2023. At the time of the petition's filing, regulatory required evidence of the company's ability to pay was unavailable for 2024, the year of the petition's priority date.

The Director accepted the 2023 tax return as evidence related to the Petitioner's ability to pay. *See generally* 6 *USCIS Policy Manual* E.4(A) n.5 ("In the event that a tax return, annual report, or audited financial statement is not available for the priority date year at the time of filing, USCIS may consider one of these three documents for the year before the priority date as part of the totality analysis.") But the 2023 tax return does not directly demonstrate the company's ability to pay the proffered wage in 2024. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to establish its ability to pay "at the time the priority date is established").

Also, USCIS records indicate the Petitioner's filing of another Form I-140, that remains pending.[4] A petitioner must demonstrate its ability to pay a proffered wage from a petition's priority date until a beneficiary obtains U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). Thus, a petitioner must establish its ability to pay the combined proffered wages of all its petitions that were approved or remained pending during the relevant period. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition when the petitioner did not demonstrate its ability to pay the combined proffered wages of multiple beneficiaries); *see generally* 6 *USCIS Policy Manual* E.4(D)(2) (stating that, in some cases, "the petitioner must demonstrate its ability to pay the proffered wages for each beneficiary for each year starting from the priority date of the petition under review").

The Director did not notify the Petitioner of these evidentiary deficiencies or allow it an opportunity to respond to them. We therefore do not base this decision on the deficiencies. In any future filings in this matter, however, the Petitioner must submit copies of its annual reports, federal tax returns, or audited financial statements for 2024 and 2025. The company must also provide the proffered wage of its other pending petition and information about the additional sponsored beneficiary's status. The Petitioner may also submit additional evidence of its ability to pay the combined proffered wages in 2024 and 2025, including evidence of any wage payments it has made to its other beneficiary.

III. CONCLUSION

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

[3] Petitioners that employ at least 100 workers may not need to submit the regulatory listed evidence. Instead, USCIS has discretion to except statements from financial officers to establish such petitioners' ability to pay proffered wages. 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(A)(4). The Petitioner here does not claim to employ at least 100 people.

[4] USCIS records identify the Petitioner's other Form I-140 by the receipt number [redacted].

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.