U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37484861

Date: FEB. 13, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a retail store, seeks to employ the Beneficiary as a computer support specialist. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

After initially approving the Form I-140, Immigrant Petition for Alien Worker (petition), Service Center Operations (SCOPS) revoked the approval of the petition. SCOPS concluded that the record did not establish that the Beneficiary possessed the minimum experience required for the offered position. SCOPS also concluded that the Petitioner did not demonstrate that a bona fide job offer exists because there is a familial relationship between the Petitioner and the Beneficiary. The matter is now before us on appeal pursuant to 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 decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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 foreign national 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.

At any time before a beneficiary obtains lawful permanent residence, however, 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 the record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). USCIS properly issues a notice of intent to revoke (NOIR) a petition if the unrebutted and unexplained record would have warranted the filing's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). The Agency properly revokes a petition's approval if a petitioner does not respond to a properly issued NOIR, or their NOIR response does not overcome all alleged revocation grounds. *Id.*at 451-52.

II. ANALYSIS

In this case, the accompanying labor certification was filed on January 5, 2021.[1] The Petitioner in this matter is a convenience store, established in 2017 with five employees. The Petitioner checked "no" to question C.9 on the labor certification, "Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, corporate officers, incorporators, or partners, and the alien?"

The labor certification also states that the minimum requirements for the offered position are an associate's degree, or foreign equivalent degree, in any field, with 24 months of experience in the job offered, as computer support specialist. The labor certification did not accept experience in any alternate position. The job duties for the offered position of computer support specialist are described as follows:

> Provide IT technical support, oversee and monitor the daily performance of the computer system to ensure proper operation. Set-up, install, and troubleshoot equipment for employee use. Develop secure portals to coordinate store's day-to-day operations and inventory control. Assist with software and networking systems to meet company needs (regarding sales, revenues, electronic transfers, accounting and connectivity). Perform minor repairs to hardware, software, and peripheral equipment. Confer with management to determine need for modifications or new systems and recommend upgrades as needed. Modify and customize programs for internal use. Train workers on computer use and provide user support.

On the labor certification, the Petitioner stated that the Beneficiary has the foreign equivalent of at least a bachelor's degree earned in 2017, and has the following experience:

- With [redacted] in Bangladesh, as an information tech supervisor, from November 1, 2019 to September 30, 2020.

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied as of the priority date.

- With [redacted] in Bangladesh, as an IT supervisor, from July 1, 2017 to August 30, 2019.

With the petition, the Petitioner provided the Beneficiary's academic credentials and a letter from [redacted] dated September 12, 2021. The letter was signed by [redacted], Managing Director. He stated that the Beneficiary was employed full-time as IT Supervisor from July 1, 2017 to August 30, 2019, and listed his job duties.

SCOPS approved the petition on October 20, 2021. In November 2023, SCOPS sent the Petitioner a NOIR, stating that new evidence provided to USCIS presented information that conflicted with the petition. SCOPS noted that the employment information that the Beneficiary had listed in a past nonimmigrant visa application submitted in August 2019 contradicted the labor certification and was inconsistent with the claims of his prior experience as a computer support specialist. Specifically, the August 2019 nonimmigrant visa application listed the Beneficiary as a student with no previous employment, despite the claim on the labor certification that he was employed with [redacted] until August 2019. SCOPS also noted that on a July 2021 nonimmigrant visa application, the Beneficiary listed the Petitioner's owner, [redacted] as a "relative." SCOPS notified the Petitioner of this derogatory information in its NOIR. SCOPS also noted that it appeared that the Petitioner and Beneficiary misrepresented their relationship, which is material to whether the Beneficiary is eligible for the requested benefit. However, SCOPS stated that it intended to enter a finding of willful misrepresentation of a material fact against only the Petitioner.

In response to the NOIR, counsel for the Petitioner stated that neither the Petitioner nor the Beneficiary willfully misrepresented any material facts. Counsel asserted that the Beneficiary used the services of a visa agent in Bangladesh to complete his nonimmigrant visa application. The NOIR response included a sworn statement from the Beneficiary stating that the visa agency mistakenly listed the Petitioner's owner as his "cousin," although they are not related. We note that, in the NOIR, SCOPS stated that the Petitioner's owner was listed as a "relative" on the Beneficiary's 2021 nonimmigrant visa application. However, it was the Petitioner, in statements made by counsel and in the Beneficiary's sworn statement with the NOIR response, that identified the Petitioner's owner as a "cousin."

The response also included a sworn statement from the owner of the visa agency, [redacted] attesting to his employee's error in listing [redacted] as the Beneficiary's "cousin." The Beneficiary's mother and father also provided sworn statements, attesting that neither of them is related to or is familiar with [redacted]

Although the Beneficiary's sworn statement did not address the 2019 nonimmigrant visa application and his claim to be a student with no previous employment, the NOIR response included additional evidence of the Beneficiary's claimed employment. The response included a letter from [redacted] dated September 1, 2019 and signed by [redacted] Managing Director. The letter states that the Beneficiary was employed as IT Supervisor from July 1, 2017 to August 30, 2019 and lists his job duties. The response also included an undated "salary certificate" signed by [redacted] attesting to the Beneficiary's employment and earnings, and an undated "pay slip" signed by [redacted] for the payment period of July 1, 2017 to August 30, 2019.

SCOPS revoked the approval of the petition. The notice of revocation (NOR) noted that the Beneficiary's claim that a visa agency prepared his nonimmigrant visa application was inconsistent with the Beneficiary's statement on both the 2019 and 2021 applications that no one assisted him in filling it out. The NOR further noted that the Petitioner did not explain the discrepancy between the Beneficiary's unemployment claimed on the 2019 nonimmigrant visa application and the employment listed on the labor certification. SCOPS again stated that it appeared that the Petitioner and the Beneficiary willfully misrepresented a material fact on the labor certification, specifically the existence of a familial relationship between the Beneficiary and [redacted] SCOPS then stated, "USCIS intends to enter a finding of willful misrepresentation of a material fact against the Petitioner."

On appeal, the Petitioner submits a brief with no new evidence. The Petitioner asserts that SCOPS did not establish "good and sufficient cause" to revoke the petition's approval, as required by Section 205 of the Act. The Petitioner states, "USCIS's reliance on a clerical error in the [nonimmigrant visa application] falls far short of this standard." The Petitioner also contests the finding that it or the Beneficiary willfully misrepresented material facts and asserts that the evidence submitted in response to the NOIR demonstrates that the attestations on the labor certification and petition are true.

A. Good and Sufficient Cause to Issue the NOIR

A labor certification is evidence of an individual foreign worker's admissibility under section 212(a)(5)(A)(i) of the Act, which provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
>
> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The INA requires USCIS to determine eligibility for the visa classification requested. *See* INA § 204(a)(1)(F). Under sections 204(b) and 212(a)(5)(A)(i) of the Act, USCIS ensures that the facts of the labor certification are true - that there are insufficient workers able, willing, qualified and available whose employment will not adversely affect the wages and working conditions of similarly employed U.S. workers. The labor certification regulations at 20 C.F.R. § 626.20(c)(8) and §656.3 reflect that the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987), citing *Pasadena Typewriter and Adding Machine Co., Inc. v. Department of Labor*, Case No. CV-83-5516-AAH(T), Slip op. (C.D.Cal. March 26, 1984); *Bulk Farms, Inc. v. Martin* (9th Cir. 1992) 963 F.2d 1286 *citing INA Legislative History,* H.R.Rep. No. 1365 Cong., 2d Sess.

Prior to approving a visa petition, USCIS must investigate the facts of each case to ensure the facts stated in the petition, which necessarily includes the labor certification, are true. *See* INA §

203(b)(3)(C); § 204(b); 8 C.F.R. §§ 204.5(a)(2), 204.5(k)(4)(i) and (l)(3)(i). For those petitions requiring a labor certification, USCIS' investigation into the facts must include consultation with DOL. *See id.* Accordingly, when USCIS receives an I-140 petition accompanied by a labor certification, the labor certification serves as the consultation with DOL along with any additional information USCIS may on a case-by-case basis obtain from DOL to verify that the facts in that labor certification and the petition are true prior to approving the petition. Thus, the labor certification is not conclusive evidence of eligibility. Instead, it is a pre-condition to being eligible to file an I-140 petition. USCIS is only required to approve those petitions where it is determined the facts stated in the petition and labor certification are true. *See* INA § 203(b)(3)(C); § 204(b); 8 C.F.R. §§ 204.5(a)(2), 204.5(k)(4)(i) and (l)(3)(i).

The labor certification is incorporated into the I-140 petition pursuant to 8 C.F.R. § 103.2(b)(1) which states that "[a]ny evidence submitted in connection with a benefit request is incorporated into and considered part of the request." On the labor certification, employers must attest that "[t]he job opportunity has been and is clearly open to any U.S. worker." 20 C.F.R. § 656.10(c)(8). "This provision infuses the recruitment process with the requirement of a *bona fide* job opportunity: not merely a test of the job market." *Matter of Modular Container Sys., Inc.*, 89-INA-228, 1991 WL 223955, *7 (BALCA July 16, 1991) *(en banc)* (referring to the former, identical regulation at 20 C.F.R. § 656.20(c)(8)).

In this case, the labor certification was submitted along with the Form I-140 as supporting evidence and thus is incorporated into the I-140 submission before USCIS. The petitioner signed Part 8 of the Form I-140 petition, which states in part that "I certify that [a]ll of the responses and information were complete, true, correct."

As such, the petitioner certified that the Form I-140 and its underlying evidence, including the required labor certification, were true and correct. Additionally, the labor certification provides employer certifications about compliance with the labor certification program and job opportunity attestations, namely that the job opportunity was and is open to U.S. workers, that U.S. worker applicants were rejected for lawful reasons, and that the job is a permanent, full-time position.

Section 212(a)(6)(C) of the INA, regarding misrepresentation, states that "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible." A willful misrepresentation of a material fact is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961); *Matter of Ng,* 17 I&N Dec. 536, 537 (BIA 1980).

Under 20 C.F.R. §§ 656.10(c)(8) and 656.3, the petitioner has the burden, when asked, to show that a valid employment relationship exists, and that a bona fide job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). 20 C.F.R. § 656.3 specifically provides that an investor may not be considered an employee for the purposes of labor certification employment. Moreover, a relationship invalidating a bona fide job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart* 374, 00-INA-93 (BALCA May 15, 2000). In *Matter of Silver Dragon Chinese Restaurant*,

19 I&N Dec. 401 (Comm. 1986), the commissioner noted that while it is not an automatic disqualification for an alien beneficiary to have an interest in a petitioning business, if the alien beneficiary's true relationship to the petitioning business is not apparent in the labor certification proceedings, it causes the certifying officer to fail to examine more carefully whether the position was clearly open to qualified U.S. workers and whether U.S. workers were rejected solely for lawful job-related reasons.

The DOL requires the disclosure of any familial relationships between the noncitizen and the owners, stockholders, partners, corporate officers, and incorporators by marking "yes" to question at Part C.9 on the labor certification. DOL guidance states that a familial relationship includes any relationship established by blood, marriage, or adoption, even if distant. For example, the guidance indicates that a familial relationship includes cousins of all degrees, aunts, uncles, grandparents, and grandchildren as well as relationships established through marriage, such as in-laws and stepfamilies. DOL, Office of Foreign Labor Certification, "OFLC Frequently Asked Questions and Answers," at https://wayback.archive-it.org/23696/20250813192847/https:/foreignlaborcert.doleta.gov/ (last visited February 13, 2026).

Here, the prior employment information and claim to have been a relative of the Petitioner's owner on the Beneficiary's prior nonimmigrant visa applications contradicts the information on the labor certification and in the experience letter. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The record lacked sufficient reliable evidence of the Beneficiary's qualifying experience for the offered position or the requested visa classification. Further, the record lacked sufficient reliable evidence of the bona fides of the job opportunity. Therefore, SCOPS issued the NOIR for good and sufficient cause.

B. Willful Misrepresentation of a Material Fact

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. For an immigration officer to find a willful and material misrepresentation of fact, he or she must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980). Any alien who seeks an immigration benefit by fraud or willfully misrepresenting a material fact is ineligible for a visa or admission to the United States. *See* section 212(a)(6)(C)(i) of the Act.

Here, SCOPS stated that it appeared that the Petitioner and the Beneficiary willfully misrepresented a material fact by answering "No" to the question at section C.9 of the labor certification, "Is the employer a closely held corporation ... in which the alien has an ownership interest, or is there a

familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?"[2] However, SCOPS stated in the NOR only that it *intended* to enter a finding of willful misrepresentation of a material fact against the Petitioner. It is not clear from SCOPS' decision whether a finding of willful material misrepresentation was made in relation to either C.9 or the Beneficiary's claimed experience, and if it was made, whether the finding pertains to the Petitioner, the Beneficiary, or both.

Considering this deficiency, we are withdrawing SCOPS' revocation and remanding the petition to allow the Petitioner an opportunity to address the additional deficiencies identified below. On remand, SCOPS may wish to issue a new NOIR outlining the deficiencies and allowing the Petitioner an opportunity to respond. SCOPS must state how the record fails to demonstrate eligibility for the classification sought under the pertinent regulatory scheme. If SCOPS makes a finding of willful material misrepresentation against either the Petitioner, the Beneficiary, or both, it must first give notice and then articulate the finding(s), as well as the basis for the finding(s), in accordance with the above-referenced case law.

C. The Beneficiary's Experience

As noted above, the accompanying labor certification states that the offered position requires 24 months of experience as a computer support specialist. The labor certification specifies that the Petitioner will not accept experience in a related occupation. Experience in the "job offered" means experience "performing key duties of the job opportunity." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, slip op. at 4 (BALCA Oct. 24, 2011) (citations omitted).

On the labor certification, the Petitioner asserts that the Beneficiary completed the foreign equivalent of a bachelor's degree in computer science from [redacted]-Bangladesh in 2017. The Petitioner also asserts that the Beneficiary acquired 24 months of experience as a computer support specialist during his employment with [redacted] in Bangladesh from July 2017 to August 2019. However, this contradicts the information the Beneficiary provided on his August 2019 nonimmigrant visa application.

In his 2019 nonimmigrant visa application, the Beneficiary attested that he was a student at [redacted]-Bangladesh from September 2012 until the date of submission on August 13, 2019. He attested to having no previous employment. This information is inconsistent with the labor certification and experience letter, which state that the Beneficiary had completed his education two years prior to submitting the nonimmigrant visa application and had already been employed for two years with [redacted]

In his 2021 nonimmigrant visa application, the Beneficiary again attested that he completed his education at [redacted]-Bangladesh in May 2017. He also attested to the following employment history:

[2] We note that SCOPS also states in the NOR that the Petitioner and the Beneficiary appear to have a "prior employer-employee relationship." However, SCOPS does not identify the basis for this statement and nothing in the record demonstrates that the Beneficiary has been employed by the Petitioner or its owner at any time. If USCIS bases an adverse decision on derogatory information of which the petitioner is unaware, they must advise the petitioner and provide it with an opportunity to rebut the information. 8 C.F.R. § 103.2(b)(16)(i).

- With [redacted] in the occupation of "computer science," from November 1, 2019 until the date of submission on July 28, 2021.
- With [redacted], as "supervisor-IT," from July 1, 2017 to August 31, 2019.

As SCOPS noted in the NOR, the Petitioner has not addressed or explained the inconsistency between the labor certification and the Beneficiary's 2019 nonimmigrant visa application. While the Beneficiary provided a sworn statement to explain other inconsistencies in his 2021 nonimmigrant visa application, he does not mention the 2019 application or his employment history. Neither the Beneficiary nor the Petitioner claims that the 2019 application included errors. We note that the 2021 nonimmigrant visa application lists the Beneficiary's employment history consistent with information stated on the labor certification, despite other errors that the Beneficiary claims concerning his relationship to the Petitioner's owner. Because the Petitioner has not explained the inconsistency in his employment history, doubt is cast whether the Beneficiary possesses the qualifying experience.

Although the inconsistency with the 2019 application remains unexplained, the Petitioner did provide additional evidence of the Beneficiary's claimed experience in response to the NOIR, including a new letter from the Beneficiary's claimed previous employer. In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. A petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *Id.* Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. at 376.

Here, the Petitioner seeks to rely only on testimonial evidence from the Beneficiary's asserted former employer in attempt to establish the claimed employment experience, without providing independent, objective evidence in support of this testimony. However, based on the conflicting unexplained information from the Beneficiary's 2019 nonimmigrant visa application, further independent evidence is required.

The NOIR response did include a pay slip and salary certificate from [redacted] However, as noted above, the pay slip and salary certificate are undated and we are precluded from determining whether these documents were created at the time of the Beneficiary's employment, his separation from [redacted] or sometime after that date. The Petitioner did not provide other contemporaneous evidence of his employment to corroborate his employment with [redacted] from July 2017 to August 2019. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See id.*

We also note that the additional evidence with the NOIR response casts further doubt on the Beneficiary's claimed experience. The signature o[redacted] on the 2019 experience letter submitted with the NOIR response is vastly different than the signature on the 2021 experience letter

submitted with the initial filing, as well as the signatures on the pay slip and salary certificate. Additionally, the letterhead on the 2019 letter does not match the letterhead on any of the other documents from [redacted] in the record. Further, the letterhead of the pay slip and salary certificate differs from both the 2019 and 2021 experience letters. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. at 591-92.

As the Petitioner was not provided notice and an opportunity to respond to these inconsistencies, on remand SCOPS may wish to issue a new NOIR outlining the deficiencies and allowing the Petitioner an opportunity to respond and establish that the Beneficiary possesses the required 24 months of experience in the offered position, as required by the labor certification.

D. The Familial Relationship

Counsel for the Petitioner asserted in the NOIR response that a visa agent assisted the Beneficiary and listed the Petitioner's owner as a "cousin" in error. The NOIR response included sworn statements from the Beneficiary, his parents, and the owner of the claimed visa agent, [redacted] No representative of the Petitioner, including its owner, provided a statement addressing a familial relationship with the Beneficiary, or any other issue discussed in the NOIR.

On appeal, counsel for the Petitioner states that SCOPS "fail[ed] to articulate specific deficiencies in the Petitioner's evidence and rel[ied] on an immaterial clerical error." However, SCOPS did articulate the specific deficiency. As noted in the NOR, on the Beneficiary's 2021 nonimmigrant visa application, which listed the Petitioner's owner as his relative, he attested that no one assisted him in filling out the application. The evidence submitted in response to the NOIR contradicts statements made by the Petitioner and the Beneficiary on the labor certification that they do not have a familial relationship. The Petitioner does not address or explain this inconsistency on appeal.

Counsel for the Petitioner also states on appeal that "both of the Beneficiary's parents – as well as the owner of the petitioner himself – provided sworn affidavits unequivocally affirming the absence of any familial ties between the Petitioner and the Beneficiary." However, the record does not include such an affidavit from the Petitioner's owner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without a statement from the Petitioner's owner regarding the familial relationship between him and the Beneficiary, if any, we are precluded from determining the credibility of other evidence within the context of the record. USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. at 376.

The statement from the owner of [redacted] states that an employee made an error in assisting the Beneficiary fill out the application. However, the statement does not provide the date of the application with which it provided assistance – either the 2019 or the 2021 application. Nor does the record include corroborating evidence of [redacted] involvement, such as a contract or agreement or receipt for services rendered, since, as noted above, neither application indicates that the Beneficiary received any assistance in preparing the forms.

To determine whether a petitioner has met its burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm'r 1989).

As the inconsistencies in the record have not been resolved, the Petitioner has not established with independent, objective evidence that there is no familial relationship between its owner and the Beneficiary and that the job offer is bona fide. Accordingly, we are unable to determine whether the facts as stated in the application are true.

A familial relationship is only one factor to be considered among multiple other factors when determining whether the Petitioner made a *bona fide* job offer. These other factors include, but are not limited to, whether a noncitizen: is in a position to control or influence hiring decisions regarding the offered position; incorporated or founded the company; has an ownership interest in the company; is involved in the management of the company; sits on its board of directors; is one of a small group of employees; has qualifications matching specialized or unusual job duties or requirements stated in the labor certification; and is so inseparable from the sponsoring employer because of his or her pervasive presence that the employer would be unlikely to continue in operation without the noncitizen. *Matter of Modular Container Sys., Inc.*, 89-INA-228, 1991 WL 223955, at 7 (BALCA 1991) (en banc). The DOL adopted the holding in *Modular Container* at 20 C.F.R. § 656.17(l).

SCOPS identified these factors in the NOIR. Although the Petitioner did not submit evidence in support of these additional factors in response to the NOIR, SCOPS did not provide an analysis or otherwise consider these other factors to determine whether the Petitioner made a bona fide job offer. Therefore, on remand SCOPS may wish to consider whether a bona fide job offer was made by the Petitioner based on the factors described at 20 C.F.R. § 656.17(l).

E. The Petitioner's Ability to Pay the Proffered Wage

Although not mentioned by SCOPS, we also note that the record does not establish the Petitioner's continuing ability to pay the proffered wage, as required by 8 C.F.R. § 204.5(g)(2).

As provided in the regulation at 8 C.F.R. § 204.5(g)(2):

> The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records may be submitted by the petitioner or requested by [USCIS].

The Petitioner must establish its continuing ability to pay the proffered wage from the priority date of the petition onward. In this case the proffered wage is $22.92 per hour (or $47,673.60 per year) and the priority date is January 5, 2021.

The initial filing included a copy of the Petitioner's federal income tax return, Internal Revenue Service Form 1120S, for 2020. However, this evidence does not cover the year of the priority date in 2021.

Additionally, we note that where a petitioner has filed I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the filing's grant, a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple petitions). USCIS records show that the Petitioner has filed one other Form I-140 petition for another beneficiary. Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiary of the other Form I-140 petition.

The record does not contain regulatory-required evidence of the Petitioner's continuing ability to pay the proffered wage for all of its beneficiaries in each year from the January 5, 2021 priority date. Without this regulatory-required evidence, the Petitioner has not established its continuing ability to pay the proffered wage from the priority date. The Petitioner was not provided notice and opportunity to respond to this deficiency. Therefore, on remand, SCOPS may wish to address this issue in a new NOIR.

III. CONCLUSION

For the reasons discussed above, we will remand this case to SCOPS for further consideration. If SCOPS issues a new NOIR, the content of that notice and the consideration of any evidence submitted by the Petitioner should comply with the requirements of 8 C.F.R. § 205.2(b) and (c) and *Matter of Estime*. SCOPS shall then issue a new decision.

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