U.S. Citizenship and Immigration Services

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

In Re: 30295958

Date: MAR. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner operates a convenience store/gas station and seeks to employ the Beneficiary as an assistant store manager. 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). A U.S. business may sponsor a noncitizen for permanent residence in this category to work in a job requiring at least two years of training or experience. *Id.*

The Director of the Texas Service Center denied the petition and dismissed the Petitioner's following motion to reopen and reconsider. The Director concluded that the company did not establish the Beneficiary's qualifying experience for the offered job. On appeal, the Petitioner contends that the Director unfairly discounted proof that the Beneficiary gained qualifying experience by operating his own business abroad.

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 conclude that the company has established the Beneficiary's qualifying experience as a sole proprietor. We will therefore sustain 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 an offered job; and a noncitizen's permanent employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). 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)(3)(ii)(D), (4).

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(a) of the Act.

## 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 January 24, 2020, 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 job's minimum requirements. USCIS may neither ignore certification terms 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 Petitioner's labor certification states the minimum requirements of the offered job of assistant store manager as two years of experience "in the job offered" or as a "manager, proprietor, or related" occupation. The labor certification states that the job requires neither education nor training.

On the labor certification, the Beneficiary attested that, by the petition's priority date, he gained more than 16 years of full-time, qualifying experience at automotive businesses in India. He stated that he worked:

- About five years, nine months as a proprietor/manager of one business, from October 2014 until the labor certification's filing in January 2020; and
- About 10 years, 11 months as a proprietor/manager of another, from January 2000 to December 2010.

To prove claimed qualifying experience, a petitioner must submit a letter from a beneficiary's former employer(s). 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must contain the employer's name, address, and title, and describe the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the alien's experience . . . will be considered." 8 C.F.R. § 204.5(g)(1).

The Petitioner submitted a 2020 letter from the business where the Beneficiary worked from 2014 to 2020. The letter states his duties as the business's full-time proprietor/manager and bears his signature and title. The Director found the letter insufficient to demonstrate the Beneficiary's claimed qualifying experience, stating that the self-signed document was not "independent objective evidence."

When adjudicating a petition, USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to

determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. The Director properly doubted the credibility of the Beneficiary's letter. As a party in this proceeding, the Beneficiary has an interest in the petition's approval and may be biased. Thus, like his attestation on the labor certification, his letter, alone, does not demonstrate his claimed qualifying experience. *See, e.g., Matter of Mawani, Inc.*, 2008-INA-00101, *5 (BALCA Mar. 18, 2009) (citation omitted) ("An alien's assertion, without documentation, does not demonstrate that he or she satisfies the employer's actual minimum requirements.")[1]

The Petitioner, however, submitted various business registrations from Indian government agencies dated between 2014 and 2018, identifying the Beneficiary as the business's owner/proprietor.[2] The Director found that the registrations do not establish the Beneficiary's duties abroad. But the government documents constitute independent, objective evidence that he owned and managed the business during that period.

The Petitioner also submitted letters from two suppliers of the Beneficiary's business. The letters: indicate that the vendors supplied the Beneficiary's business from 2015 to 2020; identify him as the business's manager; and state that he ordered the supplies and paid the vendors. The record also contains copies of eight tax invoices showing that the suppliers did business with the Beneficiary's enterprise in 2017 and 2018.

No one piece of evidence individually establishes that the Beneficiary performed managerial duties at his business from 2014 to 2020. But together, the materials meet the preponderance of the evidence standard to show his management of the business on a full-time basis as he claims.

The Director also found that "the evidence did not establish that the beneficiary performed the duties claimed on the ETA Form 9089 [Application for Permanent Employment Certification] Section H." But the Director mistakenly required proof of the Beneficiary's experience performing the offered job's duties listed in Question H.11 on the labor certification. For labor certification purposes, the phrase "experience in the job offered" means "experience performing the key duties of the job opportunity, specifically those listed in Question H.11." *Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *4 (BALCA Oct. 24, 2011) (citations omitted). But the Petitioner's labor certification does not limit qualifying experience to experience in the job offered. As previously indicated, besides experience in the job offered, the labor certification states the company's acceptance of experience as a "manager, proprietor or related" occupation. Thus, if the Petitioner demonstrates the Beneficiary's requisite experience as a manager, proprietor, or in a related occupation, he need not have experience performing the exact job duties listed on the labor certification.

The Petitioner's evidence sufficiently demonstrates the Beneficiary's alternate acceptable experience as a manager or proprietor. The Indian registration certificates identify him as the business's

[1] Even if the Beneficiary's letter does not qualify under 8 C.F.R. § 204.5(l)(3)(ii)(A) as a letter from an "employer," the Petitioner has demonstrated the unavailability of such a letter. As the Beneficiary employed himself, a separate employer could not provide a letter. *See* 8 C.F.R. § 204.5(g)(1) (allowing consideration of other evidence in lieu of an unavailable employer letter).

[2] Sole proprietorships in India can be registered with government agencies. *See, e.g.*, Cleartax, "Sole Proprietorship Registration in India – Procedure & Advantages," https://cleartax.in/s/sole-proprietorship.

owner/proprietor. Also, the letters from the vendors identify him as the business's manager and state that he ordered the supplies from them and paid them. The Petitioner further submitted a letter from an Indian accountant, stating the accountant's preparation of the business's tax returns from 2014 to 2020 and identifying the Beneficiary as the business's full-time manager.[3]

## III. CONCLUSION

A preponderance of the evidence establishes the Beneficiary's qualifying experience for the offered job. We will therefore withdraw the Director's contrary finding.

**ORDER:** The appeal is sustained.

[3] The Petitioner also submitted a letter from a purported former employee of the Beneficiary's from 2014 to 2019. But, because the record lacks documentary evidence corroborating the business's employment of the purported former worker, we do not find the letter reliable.