U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4296264

Date: OCT. 1, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a North Indian dessert cook. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(B)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center revoked the approval of the petition, concluding that the record did not establish that the Petitioner had the continuing ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other relevant petitions. The Director also concluded that the record did not demonstrate that the Beneficiary possessed the experience required by the labor certification as of the priority date. The Director entered findings of willful misrepresentation of a material fact against the Petitioner and the Beneficiary, and he invalidated the labor certification based on those findings.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).[1] *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 id.* 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 applies 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.

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is March 5, 2002. *See* 8 C.F.R. § 204.5(d).

II. REVOCATION OF A PETITION'S APPROVAL

After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Good and sufficient cause exists to issue a notice of intent to revoke (NOIR) where the record at the time of the notice's issuance, if unexplained or unrebutted, would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Similarly, revocation is proper if the record at the time of the decision, including any explanation or rebuttal evidence provided by a petitioner, warranted a petition's denial. *Id.* at 452.

III. ABILITY TO PAY THE PROFFERED WAGE

The Director concluded that the record did not establish the Petitioner's continuing ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other relevant petitions. The proffered wage in this case is $38,000 per year.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. 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 determining a petitioner's ability to pay, we first examine whether it paid a beneficiary the full proffered wage each year from a petition's priority date. Here, the record does not demonstrate that the Petitioner has paid the Beneficiary any wages from the priority date onward. Thus, we next examine whether it had sufficient annual amounts of net income or net current assets to pay the proffered wage. If a petitioner's net income or net current assets are insufficient, we may also consider other evidence of its ability to pay the proffered wage.[2]

The record indicates that the Petitioner is a general partnership. From the priority date to the date of the petition's initial approval, the Petitioner's federal tax returns state net income[3] amounts as follows:

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[2] Federal courts have upheld our method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Estrada-Hernandez v. Holder*, -- F. Supp. 3d --, 2015 WL 3634497, *5 (S.D. Cal. 2015); *Rizvi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014), *aff'd*, 627 Fed. App'x 292, 294-295 (5th Cir. 2015).

[3] For a partnership, where the partnership's income is exclusively from a trade or business, USCIS considers net income to be the figure shown on Line 22 of page one of the Petitioner's IRS Form 1065, U.S. Return of Partnership

- $97,592 in 2002;
- $148,761 in 2003;
- $55,460 in 2004;
- $114,950 in 2005; and
- $140,251 in 2006.

Therefore, for the years 2002 to 2006, the Petitioner would have had sufficient net income to pay the proffered wage; however, where a petitioner has filed Form I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the continuing ability to pay the proffered wage to each beneficiary. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). USCIS records show that the Petitioner filed at least two other Form I-140 petitions for other beneficiaries. Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.[4] We do not consider the other beneficiaries for any year that the Petitioner has paid the Beneficiary a salary equal to or greater than the proffered wage.

The Petitioner must document the receipt numbers, names of beneficiaries, priority dates, and proffered wages of these other petitions, and indicate the status of each petition and the date of any status change (i.e., pending, approved, withdrawn, revoked, denied, on appeal or motion, beneficiary obtained lawful permanent residence). To offset the total wage burden, the Petitioner may submit documentation showing that it paid wages to other beneficiaries. To demonstrate that it has the ability to pay the Beneficiary and the other beneficiaries, the Petitioner must, for each year at issue (a) calculate any shortfall between the proffered wages and any actual wages paid to the primary Beneficiary and its other beneficiaries, (b) add these amounts together to calculate the total wage deficiency, and (c) demonstrate that its net income or net current assets exceed the total wage deficiency.[5] The NOIR indicated that the Petitioner must demonstrate its ability to pay the combined proffered wages of all of its applicable beneficiaries and specifically requested the information detailed above. However, in its response to the NOIR, the Petitioner did not submit evidence regarding any of its

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Income. However, where the Petitioner has income, credits, deductions, or other adjustments from sources other than a trade or business, net income is found on page 4 of IRS Form 1065 at line 1 of the Analysis of Net Income (Loss) of Schedule K for years before 2008. *See* Internal Revenue Serv., Instructions for Form 1065, https://www.irs.gov/pub/irs-pdf/i1065.pdf (last visited Aug. 17, 2020). The record contains several individual federal income tax returns for one of the Petitioner's general partners. The Director indicated that he would consider certain figures from that partner's IRS Form 1040, Schedule E, as evidence of the Petitioner's ability to pay the proffered wage. However, the Director erred in considering the partner's share of nonpassive income from the partnership reflected on the Forms 1040, Schedule E. That income was already considered as part of the Petitioner's net income in the ability to pay determination.

[4] The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary.

[5] It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

other relevant petitions. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As noted by the Director in the notice of revocation (NOR), we cannot determine the Petitioner's ability to pay the combined proffered wages of all of its applicable beneficiaries without this information.

On appeal, the Petitioner does not provide any additional information regarding its other relevant petitions. Instead, it asserts that it has complied with USCIS law and policy in establishing its ability to pay the instant beneficiary the proffered wage during the relevant years at issue. It states that neither the statute at 8 C.F.R. § 204.5(g)(2) nor relevant USCIS policy require the Petitioner to establish its continuing ability to pay the combined proffered wages of all of its applicable beneficiaries. *See* Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQOPRD 90/16.45, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* 2 (May 4, 2004), http://www.uscis.gov/laws/policy-memoranda. By its own terms, the Yates memo is not intended to create any right or benefit or constitute a legally binding precedent within 8 C.F.R. § 103.3(c) and 8 C.F.R. § 103.9(a), but was merely offered as guidance. USCIS policy memoranda are not legally binding. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (stating that an agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely."). Even if the policy memo was binding, it does not specifically address a petitioner, like the instant Petitioner, that is obliged to pay combined proffered wages of multiple beneficiaries.

A petitioner must demonstrate its ability to pay a proffered wage to establish a "realistic" job offer. *See Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg'l Comm'r 1977) (stating that "the Service must consider the merits of the petitioner's job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met."). Although *Matter of Great Wall* and the regulation at 8 C.F.R. § 204.5(g)(2) do not specifically address a petitioner with multiple beneficiaries, a petitioner's wage obligations, like other liabilities, must be considered when determining whether it can realistically pay a proffered wage. To establish a realistic job offer, the Petitioner must demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other relevant petitions. It has not done so here.

Finally, on appeal, the Petitioner asserts that we should consider the personal tax returns of one of its general partners, together with the partnership's tax returns, as evidence of its ability to pay. Although a general partner's personal assets may be utilized to show the Petitioner's ability to pay the proffered wage, that partner's personal liabilities must also be examined in order to make a determination that his or her assets are available to pay the proffered wage. The record of proceeding does not contain sufficient information regarding either of the general partners' personal assets and liabilities. Thus, the Petitioner has not demonstrated that the assets of the general partner may be utilized to pay the proffered wage. The Petitioner has not established its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other relevant petitions. The Director properly revoked the approval of the petition on this basis.

IV. BENEFICIARY'S QUALIFICATIONS

The Director also concluded that the record did not demonstrate that the Beneficiary possessed the experience required by the labor certification as of the priority date. A beneficiary must meet all of

the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires two years of experience in the job offered of North Indian dessert cook. The labor certification states that the Beneficiary qualifies for the offered position based on experience as a North Indian dessert cook/confectioner with [redacted] in India from June 1994 to the date the labor certification was filed in March 2002.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3). The record contains an employment certification from [redacted] manager and owner of [redacted] stating that it employed the Beneficiary as a desserts cook/confectioner from June 1994 to the date of the letter on January 27, 2006. The description of the job duties on the employment certification matches the description of the job duties on the labor certification almost exactly.

The Director noted in the NOIR that the Beneficiary was unable to describe his duties as a chef, or his work history as a chef, during an interview at the U.S. Embassy in New Delhi, India, in March 2011. Following that interview, the consular officer spoke with the Beneficiary over the phone and the Beneficiary stated that he worked in a sweet shop from 1994 to 1997 but has worked intermittently since then because he owns a farm. These dates contradict the dates represented on the labor certification and in the support letter from [redacted]. Additionally, the consular officer contacted five individuals living in the same village as the Beneficiary in India, and they all claimed to know the Beneficiary well. Each individual stated that the Beneficiary owns a large and prosperous farm, that he is wealthy, and that he has never had a need to work as a cook or chef in a restaurant.

The Petitioner submitted several affidavits in 2011 in response to the findings of the consular officer. An affidavit dated September 6, 2011, from [redacted] manager and owner of [redacted] details his phone call with the U.S. Embassy. He stated in the affidavit that the Beneficiary was employed as a sweetmaker from June 1994 to January 2006, but that he couldn't immediately confirm this information when the consular officer called him. Further, an affidavit dated September 6, 2011, from the Beneficiary details his contact with the U.S. Embassy in 2011. He states that he told the officer that he was currently working in agriculture, but he did not mention his employment with [redacted] Next, an affidavit dated September 6, 2011, from [redacted], a friend of the Beneficiary, details his phone call with the U.S. Embassy. He stated that he told the officer that the Beneficiary "earlier… was doing the job of Sweetmaking, but I do not know about these days." He also indicated that he told the officer that the Beneficiary was doing other agricultural work. Finally, an affidavit dated September 6, 2011, from [redacted], a friend of the Beneficiary, details his phone call with the U.S. Embassy. He stated that he told the officer that the Beneficiary was doing the job of sweetmaker a "long time ago."

In a second interview at the U.S. Embassy in May 2012, the Beneficiary indicated that he was currently working as a farmer and, in a follow-up call, the Beneficiary stated that he could not recall the dates that he worked as a cook. In a third interview at the U.S. Embassy in September 2017, the Beneficiary stated that he worked for [redacted] from 1996 to 2004[6] and that although there were four other

[6] These dates contradict the dates represented in the support letter from [redacted].

employees working there at that time, he could not recall the names of any of them. He stated that he was currently working as a farmer and he could not explain how to make basic Indian desserts when asked by the officer. The consular officer also noted that the Beneficiary's son was coaching him on the answers to the officer's questions during the interview.

The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the petition. *Id.* In the NOIR, the Director noted the inconsistencies in the evidence detailed above and requested independent, objective evidence to resolve the inconsistencies in the record regarding the Beneficiary's employment history. In response to the NOIR, the Petitioner provided a declaration of the Beneficiary dated October 18, 2018. He indicated that during his 2017 consular interview, he properly explained to the officer how to make several dishes, including gulab jamun and rasugulla. However, this contradicts the consular officer's notes regarding the interview. The Petitioner did not provide any new independent and objective evidence to resolve the inconsistencies in its response to the NOIR. Thus, in the NOR, the Director concluded that the record did not demonstrate that the Beneficiary possessed the experience required by the labor certification as of the priority date.

On appeal, the Petitioner states that the previously submitted evidence, including the statements of the Beneficiary and his friends, is independent, objective evidence resolving the inconsistencies in the Beneficiary's employment history and that "there can be no other evidence to resolve the discrepancy" related to his prior employment. *See id.* We disagree. The record contains no payroll records, paystubs, tax records, or other employment records establishing the Beneficiary's prior employment with [redacted] The Petitioner has not resolved the inconsistencies in the record with independent, objective evidence establishing that the Beneficiary possessed the experience required by the labor certification as of the priority date. The Director properly revoked the approval of the petition on this basis.

V. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

The Director found that the Beneficiary and the Petitioner willfully misrepresented the Beneficiary's employment with [redacted] A finding of willful misrepresentation of material fact against a beneficiary or petitioner requires the following elements:

- The beneficiary or petitioner procured, or sought to procure, a benefit under U.S. immigration laws;[7]
- The beneficiary or petitioner made a false representation;[8]
- The false representation was willfully made;[9]

[7] *See* 8 *USCIS Policy Manual*, *supra*, at J.3(B).

[8] A misrepresentation is an assertion or manifestation that is not in accordance with the true facts. A false representation may be made in oral interviews, written applications, or by submitting evidence containing false information. *See* 8 *USCIS Policy Manual*, *supra*, at J.3(C); *see also* Legacy INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991).

[9] *See* 8 *USCIS Policy Manual*, *supra*, at J.3(D). The term "willfully" means knowing and intentionally, as distinguished

- The false representation was material;[10] and
- The false representation was made to a U.S. government official.[11]

See 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual; *see also Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui,* 15 I&N Dec. 288 (BIA 1975).

A. The Beneficiary

The Beneficiary indicated on the labor certification that he worked as a North Indian dessert cook/confectioner with [redacted] in India from June 1994 to the date the labor certification was filed in March 2002. In light of the contradictory information presented and lack of independent, objective evidence regarding the Beneficiary's prior work experience as detailed above, the entry at Item 15 of Part B of the Form ETA 750 was not correct and constitutes a false representation. Because the Beneficiary did not have the represented experience as a North Indian dessert cook, the Beneficiary's false attestation on the labor certification constitutes a false representation on the face of a written petition.

Second, the Beneficiary willfully misrepresented material facts regarding his previous employment with [redacted] The Beneficiary signed the labor certification attesting to the veracity of the claims on the labor certification. In this way, the Beneficiary directly participated in the preparation and submission of documents that convey the false impression that he had the qualifying experience as required on the labor certification. In light of the unresolved contradictory evidence in the record regarding the Beneficiary's experience, we conclude that the Beneficiary's misrepresentations were willful.

Third, the evidence is material to the Beneficiary's eligibility. Here, the Beneficiary's experience with [redacted] is material to the whether he meets the minimum requirements of the offered position. The labor certification requires two years of experience in the job offered. The misrepresentation regarding the Beneficiary's experience on the labor certification cut off a potential line of inquiry regarding his claimed experience. *See id.*

On appeal, the Petitioner asserts that there is no contradiction in the evidence. It notes the March 2011 phone conversation between the Beneficiary and the consular officer, during which the Beneficiary indicated that he worked in a sweet shop from 1994 to 1997 but has worked intermittently since then because he owns a farm. It asserts that the "statement at most indicates that the beneficiary worked on and off" and that it "does not mean that the beneficiary has quit or stopped working."[12] However, the Beneficiary indicated on the labor certification that he worked 48 hours per week at [redacted]

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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).

[10] A material misrepresentation is a false representation concerning a fact that is relevant to the petitioner's eligibility for an immigration benefit. *See* 8 *USCIS Policy Manual*, *supra*, at J.3(E). A material misrepresentation is one that "tends to shut off a line of inquiry relevant to" eligibility. *Matter of Ng,* 17 I&N Dec. 536, 537 (BIA 1980).

[11] *See* 8 *USCIS Policy Manual*, *supra*, at J.3(F); *see also Matter of Y-G-,* 20 I&N Dec. 794, 796 (BIA 1994).

[12] USCIS may reject an assertion of fact in a petition if USCIS is not persuaded that the assertion is true. *See, e.g.,* section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1); *cf. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988).

from June 1994 to the date the labor certification was filed in March 2002. There is no indication on the labor certification that he "worked on and off" at any point during that period of time.

On appeal, the Petitioner also points to the "long time gap" between the Beneficiary's call with the consular officer in 2012 and the end of his employment with [redacted] in 2006 as the reason for his inability to recall his dates of employment. It also points to the "long time gap" between the Beneficiary's September 2017 consular interview and the end of his employment with [redacted] in 2006 as the reason for his inability to recall the correct dates of his employment. However, this explanation does resolve the inconsistencies in the evidence relating to the Beneficiary's prior employment. A few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and a petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of a petitioner's assertions. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead us to conclude that the evidence of the Beneficiary's work history is not credible. We agree with the Director's determination that the Beneficiary made a willful misrepresentation of material fact on the labor certification. This finding of willful material misrepresentation shall be considered in any future proceeding where the Beneficiary's admissibility is an issue.[13]

B. The Petitioner

Here, the Director's analysis of the record related to the Beneficiary's willful misrepresentation of material facts related to his prior work experience, yet the Director also entered a formal finding of willful misrepresentation of a material fact against the Petitioner. The Director did not analyze the Petitioner's willful misrepresentation of a material fact. We will therefore withdraw the Director's finding of willful misrepresentation of a material fact against the Petitioner.

VI. INVALIDATION OF THE LABOR CERTIFICATION

The regulation at 20 C.F.R. § 656.30(d) provides, in pertinent part:

> (d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application.

We will withdraw the Director's invalidation of the labor certification and reinstate it.

[13] Any foreign person who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. *See* section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

VII. SUCCESSOR-IN-INTEREST

The labor certification application and petition were filed by [redacted]. At the time of filing, according to the tax returns in the record, [redacted] was the assumed name for a general partnership, [redacted]. In response to the NOIR, the Petitioner indicated that "an entity named [redacted] has taken over all the operations of [the Petitioner]," but the date and details of the purported successorship were not provided. The record contains a statement dated October 18, 2017, from [redacted], one of the Petitioner's general partners, indicating that [redacted] will employ the Beneficiary. It appears that [redacted] is using the same assumed name as the Petitioner, and that its President is [redacted]. The record also contains the Articles of Incorporation for [redacted]. The Petitioner asserted in its NOIR response that the job offered by the successor employer is the same as originally offered on the labor certification and that the successor meets all of the requirements of a successor-in-interest. The Director did not address this issue in his NOR, and the appeal was filed under the Petitioner's assumed name and was signed by [redacted].

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986); *see also* Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS, HQ 70/6.2, *Successor-in-Interest Determinations in Adjudication of Form I-140 Petitions; Adjudicators Field Manual (AFM) Update to Chapter 22.2(b)(5)* (AD09-37) (August 6, 2009), http://www.uscis.gov/legal-resources/policy-memoranda. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor employer. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. In any future filings, the Petitioner must address and establish, if applicable, its purported successor-in-interest relationship with [redacted].

VIII. CONCLUSION

In sum, we will dismiss the appeal. The record does not establish that the Petitioner had the continuing ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other relevant petitions, nor does it demonstrate that the Beneficiary possessed the experience required by the labor certification as of the priority date. Further, although we agree with the Director's determination that the Beneficiary made a willful misrepresentation of material fact on the labor certification, we will withdraw the Director's finding of willful misrepresentation of a material fact against the Petitioner. We will also withdraw the Director's invalidation of the labor certification, and we will reinstate it.

ORDER: The appeal is dismissed.

FURTHER ORDER: The Form ETA 750, case number [redacted], is reinstated.