



**U.S. Citizenship
and Immigration
Services**

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

In Re: 20501479

Date: JUL. 06, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a telecommunications company, seeks to employ the Beneficiary as a principal software engineer. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner was the successor-in-interest to the entity that filed the labor certification. The matter is now before us on appeal.

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 sustain the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a noncitizen, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a noncitizen will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, a noncitizen may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

The issue on appeal is whether the Petitioner is a valid successor-in-interest to the entity that filed the labor certification. A petition for a professional worker must generally include a valid individual labor certification. 8 C.F.R. § 204.5(l)(3)(i). A labor certification is only valid for the particular job opportunity, the particular beneficiary, and the area of employment stated on the document. 20 C.F.R. § 656.30(c)(2). A petitioner may use another entity's labor certification if it establishes itself as that entity's successor-in-interest. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

A valid successor-in-interest relationship exists if three conditions are satisfied. First, the successor must fully describe and document the transfer and assumption of the ownership of all, or a relevant part of, the predecessor by the successor. Second, the successor must demonstrate that the job opportunity is the same as the one originally offered on the labor certification. Third, the successor must establish eligibility for the immigrant visa in all respects, including evidence of ability to pay. *Id.* at 482. Notably, the successor must establish the predecessor's ability to pay the proffered wage as of the priority date¹ until the date of transfer of ownership to the successor, as well as the successor's ability to pay the proffered wage from the date of transfer of ownership forward. 8 C.F.R. § 204.5(g)(2); *see also Matter of Dial Auto*, 19 I&N Dec. at 482.

In this case, the Petitioner states that it is the successor-in-interest to the labor certification employer as the result of a merger that was completed on April 1, 2020. The Director denied the petition, finding that while the job opportunity was the same as the one originally offered on the labor certification, the documentation provided was insufficient to show that the predecessor company was able to pay the proffered wage or that the Petitioner had assumed the essential rights and obligations of the predecessor necessary to carry on the business.²

On appeal, the Petitioner provides documentation of the transfer of the ownership of the predecessor to the Petitioner as part of a complex merger transaction. The Petitioner also provides documentation evidencing that it has assumed the essential rights and obligations of the predecessor necessary to carry on the predecessor's business. Finally, the Petitioner provides documentation that the predecessor had the ability to pay the proffered wage as of the priority date and until the date of transfer of ownership to the successor, and that the successor had the ability to pay the proffered wage from the date of transfer of ownership forward.

Upon *de novo* review, we find that the Petitioner has established, by a preponderance of the evidence, that it is a valid successor-in-interest to the predecessor entity that filed the labor certification. Therefore, we will withdraw the Director's decision and sustain the appeal.

¹ The priority date of this petition is the date the underlying labor certification was filed with DOL. 8 C.F.R. § 204.5(d). Here, the priority date is July 15, 2017.

² The mere assumption of immigration obligations, or the transfer of immigration benefits derived from approved or pending immigration petitions or applications, will not give rise to a successor-in-interest relationship unless the transfer results from the *bona fide* acquisition of the essential rights and obligations of the predecessor necessary to carry on the business. *See* 19 Am. Jur. 2d *Corporations* § 2170 (2010).

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ORDER: The appeal is sustained.