



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

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

In Re: 01422286

Date: JUL. 13, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a trucking company, seeks to employ the Beneficiary as a bookkeeper. The company requests her classification 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).

After first granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that, on the accompanying certification from the U.S. Department of Labor (DOL), the Petitioner willfully concealed family relationships among its corporate officers and the Beneficiary. On appeal, the Petitioner asserts that prior counsel misrepresented the relationships without the company's knowledge.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (discussing the burden of proof in revocation proceedings); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain DOL certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) employment of a noncitizen in the position will not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. 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).

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.

At any time before a beneficiary obtains lawful permanent resident status, 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 a record, a petition's erroneous approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition's approval if the unexplained and un rebutted record at the time of the NOIR's issuance would have warranted the petition's denial. *Matter of Esteime*, 19 I&N Dec. 450, 451 (BIA 1987). If a petitioner does not submit a NOIR response or the business's response does not overcome the stated revocation grounds, USCIS properly revokes the petition's approval. *Id.* at 452.

II. THE ALLEGED MISREPRESENTATION

The Director concluded that, on part C.9 of the accompanying labor certification, the Petitioner willfully concealed family relationships among its two corporate officers at the time and the Beneficiary. We will withdraw the Director's decision.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record at the time of the NOIR's issuance did not establish the Petitioner's required ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

The labor certification states the proffered wage of the offered position of bookkeeper as \$31,554 a year. The petition's priority date is October 27, 2008, 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). USCIS approved the petition in June 2009. Thus, the Petitioner had to demonstrate its ability to pay the proffered wage in 2008, the year of the petition's priority date, and 2009, the year of the filing's approval.

The Petitioner submitted a copy of its federal income tax return for 2008. The record, however, lacks regulatory required evidence of the company's ability to pay the proffered wage in 2009. Thus, the record at the time of the NOIR's issuance would have warranted the petition's denial. *See Matter of Esteime*, 19 I&N Dec. at 451.

The Director did not notify the Petitioner of this potential revocation ground. We will therefore remand the matter. On remand, the Director should issue a new NOIR instructing the company to submit copies of annual reports, federal tax returns, or audited financial statements for 2009. *See* 8 C.F.R. § 204.5(g)(2). The Petitioner may also submit additional evidence of its ability to pay the proffered wage in 2009, including proof of any wages it paid the Beneficiary or documentation supporting the factors stated in *Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

If supported by the record, the new NOIR may include additional, potential grounds of revocation. The Director, however, must notify the Petitioner of all potential revocation grounds and afford the company a reasonable opportunity to respond. *See* 8 C.F.R. § 205.2(b). Upon receipt of a timely response, the Director should review the entire record and issue a new decision.

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