U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12509162

Date: JUL. 29, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, an IT consulting business, seeks to employ the Beneficiary as a software consultant. 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, "EB-3" 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 petition, the Director of the Texas Service Center revoked the approval. He first concluded that the petition was approved in error because the Petitioner requested classification of the position as a professional, rather than a skilled worker. The labor certification did not support the requested classification because the position required less than a baccalaureate degree.[1] He also concluded that the Petitioner did not establish that the Beneficiary met the minimum requirements for classification as a professional, or that it had the ability to pay the proffered wage. The Director dismissed a subsequent motion to reopen and reconsider filed by the Beneficiary. The matter is now before us on the Beneficiary's appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the case for further consideration and the issuance of a new decision.

I. THE BENEFICIARY AS AN AFFECTED PARTY

Beneficiaries generally cannot file appeals or motions in visa petition proceedings. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (excluding a beneficiary of a visa petition as an "affected party"). U.S. Citizenship and Immigration Services (USCIS), however, treats beneficiaries as affected parties if they are eligible to "port" under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly request to do so. *See Matter*

[1] Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii) allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

of V-S-G- Inc., Adopted Decision 2017-06, *14 (AAO Nov. 11, 2017). "A beneficiary's request to port is 'proper' when USCIS has evaluated the request and determined that the beneficiary is indeed eligible to port prior to the issuance of a NOIR [notice of intent to revoke] or NOR [notice of revocation]." USCIS Policy Memorandum PM 602-0152, *Guidance on Notice to, and Standing for, AC 21 Beneficiaries about I-140 Approvals Being Revoked After Matter of V-S-G- Inc.* 5 (Nov. 11, 2017), https://www.uscis.gov/legal-resources/policy-memoranda. Thus, a beneficiary becomes an "affected party" with legal standing in a revocation proceeding when USCIS makes a favorable determination that the beneficiary is eligible to port. *Id.*

In this case, the Beneficiary filed a Form I-485 Supplement J, Request for Job Portability Under INA Section 204(j), which was later approved.[2] The Director's NOIR is dated July 1, 2019 and was issued to the Petitioner. The Director issued the decision to both the Petitioner and the Beneficiary, which states, "The beneficiary is now found to be eligible to receive notices and is hereby, granted the opportunity to participate in these proceedings, … in accordance with the findings in the adopted decision in *Matter of V-S-G-, Inc.* …" Therefore, the Beneficiary is considered in affected party in these revocation proceedings.

II. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* 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 foreign national 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 USCIS. *See* 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 foreign national may finally 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 must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Per *Matter of Estime*, "[i]n determining what is 'good and

[2] Form I-485 Supplement J was subsequently reopened and denied on March 10, 2020, and denied again on August 19, 2020.

sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof." *Id.*

In this case, the accompanying labor certification was filed on June 21, 2006.[3] The petition was initially filed on August 18, 2006, and approved on September 13, 2006. The Beneficiary filed Form I-485, Application to Register Permanent Residence or Adjust Status, on October 2, 2007. As noted above, the Beneficiary filed Form I-485 Supplement J, which was approved on October 23, 2019.[4] The Form I-485 Supplement J stated that the Beneficiary requested job portability to a new employer in the position of systems analyst and programmer.[5]

III. THE REQUESTED CLASSIFICATION

A petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor's degree as a minimum for entry; that the job offer portion of the labor certification requires at least a bachelor's degree or foreign equivalent degree; that the beneficiary possesses a U.S. bachelor's degree or foreign equivalent degree from a college or university; and, that the beneficiary meets all of the requirements of the labor certification. *See* Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides immigrant classification to professionals. *See also* 8 C.F.R. § 204.5(l)(3).

In this case, section H of the labor certification (Job Opportunity Information) specifies the following with respect to the requirements for the job of software consultant:

H.4	Education: minimum level	Other

[3] 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.

[4] The instructions to Form I-485 Supplement J state that this form is used to:

1. Confirm that the job offered to you in Form I-140 remains a bona fide job offer that you intend to accept once we approve your Form I 485 is approved; or
2. Request job portability under INA section 204(j) to a new, full-time, permanent job offer that you intend to accept once your Form I-485 is approved. This new job offer must be in the same or a similar occupational classification as the job offered to you in Form I-140 that is the basis of your Form I-485.

See I-485 J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j), https://www.uscis.gov/sites/default/files/document/forms/i-485supjinstr-pc.pdf.

[5] The instructions for Form I-485 Supplement J also state "…the adjudication of Supplement J, for applicants requesting job portability under INA section 204(j), is primarily limited to a determination of whether you have a bona fide job offer from a U.S. employer that is in the same or a similar occupational classification as the position for which the underlying Form I-140 was filed and approved." *Id.*

H.4-A	Specify the education required	Any combo programs/educ from any institutions determined equiv to a US BS
H.4-B	Major field of study	Computer Science, Engg. (any), Math or related
H.5	Training required?	No
H.6	Experience in the job offered required?	Yes
H.6-A	Number of months experience required	24
H.7	Alternate field of study acceptable?	No
H.8	Alternate combination of education and experience acceptable?	Yes
H.8-A	Specify the alternate level of education required	Other
H.8-B	Indicate the alternate level of education required	Any combo programs/educ from any institutions determined equiv to US BS
H.8-C	Indicate the number of years experience acceptable in question 8	2
H.9	Foreign educational equivalent acceptable?	Yes
H.10	Experience in an alternate occupation acceptable?	Yes
H.10-A	Number of months experience required	24
H.10-B	Job title of alternate occupation	Computer Software Professional
H.14	Any suitable combination of education, training or experience is acceptable.	

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is "other," specified as "any combo programs/educ from any institutions determined equiv to a US BS," in Computer Science earned in 1994 at [redacted] University, Mississippi. As evidence of this credential the Petitioner submitted a copy of the Beneficiary's master of science degree in computer science, and official graduate academic record from [redacted] University.[6]

[6] The Petitioner also submitted a copy of the Beneficiary's bachelor of commerce degree and memorandum of marks from [redacted] University issued in 1984, and an academic equivalency evaluation from the Trustforte Corporation. The evaluation states that the Beneficiary's bachelor of commerce degree is equivalent to three years of academic studies toward a bachelor's degree at an accredited U.S. college or university, and that the Beneficiary thereafter earned a master of science degree in computer science at an accredited university in the United States.

On the petition, in Part 2, Petition Type, the Petitioner checked box "e," requesting classification of the Beneficiary as "a professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree) or a skilled worker (requiring at least two years of specialized training or experience).[7] Upon approval of the petition, USCIS issued the Form I-797, Approval Notice, dated September 14, 2006 to the Petitioner, listing the approved classification as "Skilled Worker or Professional Sec. 203(b)(3)(A)(i) or (ii)."

In the NOIR, the Director stated that the Petitioner had requested classification as a professional, although the labor certification allowed for less than a U.S. bachelor's degree to qualify for the offered position. Specifically, the Director stated that the language in H.4 and H.4-B ("any combo programs/educ from any institutions determined equiv to a US BS") lowered the education requirements to allow education less than a U.S. bachelor's degree. In response to the NOIR, the Petitioner asserted that it never requested the professional classification and the version of Form I-140 at the time of filing did not separate professional and skilled worker classifications to allow the Petitioner to distinguish its request for classification in those two categories.

In revoking the approval of the petition, the Director pointed to a letter from the Petitioner, dated August 8, 2006, submitted with the initial filing. In the letter, the Petitioner provides a description of the offered position and states that the position "is classified as 'professional' by the Department of Labor."[8] The Director also stated that the petition was approved under the professional classification and the Petitioner did not submit a request for USCIS to correct the classification from professional to skilled worker.

On appeal, the Petitioner reiterates that the version of Form I-140 at the time of filing did not allow it to distinguish its classification request between professional and skilled worker. It also notes that the Notice of Approval does not distinguish between the two classifications, so that it was not aware of the actual classification assigned to the petition upon approval and would not have known to request any correction.

Following a review of the record and based on the form's construction at the time of filing, the Petitioner has established by a preponderance of the evidence that it properly requested classification of the Beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A), and that the labor certification supports its skilled worker request based on a job offer requiring at least two years of training or experience. Therefore, this portion of the Director's decision is withdrawn. As set forth below, we will remand the matter on other grounds. On remand, the petition should be considered as a request for classification of the Beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

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[7] USCIS revised the Form I-140 as of January 6, 2010, and separated the professional (now box "e") and skilled worker (now box "f") categories, and must select one category or the other for consideration. Previously, and at the time of filing the instant petition, the two categories were combined into one box (box "e").

[8] In the NOR, the Director incorrectly stated the date of the letter as August 8, 2016. As a result of this error in the date, the Petitioner stated in its motion to reopen and reconsider that it was unclear what the Director was referencing in his decision, that this letter was not part of the record of proceedings, and that "a statement ten years later ... not in reference to this specific job opportunity is an inappropriate basis for revocation, is arbitrary and capricious, and against fundamental fairness and due process."

IV. THE BENEFICIARY'S QUALIFICATIONS

As discussed above, the Petitioner requests classification of the Beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that to qualify for skilled worker classification:

> … the petition must be accompanied by evidence that the [beneficiary] meets the educational, training or experience, and any other requirements of the individual labor certification … The minimum requirements for this classification are at least two years of training or experience.

To be eligible for skilled worker classification, therefore, the Beneficiary must meet all specific requirements of the labor certification and have at least two years of relevant experience (or training). All requirements must be met by the petition's priority date, which in this case is November 9, 2017. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

Section J of the labor certification lists the following employment experience for the Beneficiary:

- The Petitioner, in the offered position, from September 6, 2005 to at least the date of filing on June 21, 2006;[9]
- [redacted] as a computer software professional, from April 18, 2005 to September 2, 2005;
- The Petitioner, as a computer software professional, from September 1, 2004 to January 31, 2005;
- [redacted] as a computer software professional, from January 1, 1999 to June 8, 2003 (the Petitioner asserts that there is a typographical error in the end date, which should be June 8, 2001);
- [redacted] as a computer software professional, from April 8, 1996 to October 31, 1997 (the Petitioner asserts that there is another typographical error in omitting the Beneficiary's employment with [redacted] from November or December 1997 until December 1999);
- [redacted] as a computer software professional, from February 6, 1995 to March 29, 1996; and
- [redacted], as a computer software professional, from June 1, 1994 to January 30, 1995.

With the petition, in support of the Beneficiary's experience, the Petitioner submitted one letter from a former employer. The letter, dated January 31, 2006, is from the payroll/benefits coordinator on [redacted] letterhead. The letter states that the Beneficiary was employed as a technical consultant with [redacted] which was acquired by [redacted] in July 2003. The Beneficiary's dates of employment are stated as January 1, 1999 to June 8, 2001.

The record also includes two versions of Form G-325A, Biographic Information, signed by the Beneficiary and submitted with two separate I-485 Applications to Register Permanent Residence or

[9] A labor certification employer cannot rely on experience that a foreign national gained with it, unless the experience was in a job substantially different than the offered position or the employer demonstrates the impracticality of training a U.S. worker for the offered position. 20 C.F.R. § 656.17(i)(3).

Adjust Status. In the first version, dated April 16, 2001, the Beneficiary listed his employment history as follows:

- [redacted] "S/W Tech Consultant, from December 1997 to at least the date the form was signed; and
- [redacted] Support Engineer, from April 1996 to November 1997.

In the second version, dated July 31, 2007, the Beneficiary listed his employment history as follows:

- The Petitioner, Software Consultant, from September 2004 to at least the date the form was signed; and
- [redacted] Technical Consultant, from November 1997 to June 2001.

In the NOIR, the Director noted the various employment histories in the record and found these to be inconsistent with each other, and with the letter from [redacted] Due to the inconsistencies, the Director stated that the Petitioner had not established that the Beneficiary met the minimum requirement for the offered position of 24 months of experience as a computer software professional.

In response to the NOIR, the Petitioner asserted that the inconsistencies were a result of typographical errors and a series of corporate transactions of the Beneficiary's employers. Specifically, the Petitioner explained that the Beneficiary began working for [redacted] at the end of 1997 pursuant to an H-1B nonimmigrant petition filed on his behalf, that this employment was inadvertently omitted from the Section J of the labor certification, that [redacted] was purchased by [redacted] in January 1999, and that the Beneficiary left [redacted] employment in June 2001. It further explained that [redacted] was later purchased by [redacted] in July 2003, although the Beneficiary had already left the organization's employment in 2001. In support of its assertions, the Petitioner provided copies of the cover letters and approvals of the Beneficiary's H-1B status with [redacted] and [redacted] news articles announcing the corporate transactions between [redacted], [redacted] and [redacted]; and a notification of layoff dated June 8, 2001 issued to the Beneficiary by [redacted] The Petitioner also provided Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, issued to the Beneficiary by [redacted] in 1999, 2000 and 2001.

In addition, the Petitioner provided a statement from the Beneficiary attempting to resolve the inconsistencies. The Beneficiary attests to the various changes in employer and corporate transactions detailed by the Petitioner, and also asserts that he omitted his employment with [redacted] for five months in 2005 from his 2007 Form G-325A due to "carelessness." The Beneficiary did not mention the earlier 2001 Form G-325A in his statement, nor did the Petitioner address this form specifically in its response.

In revoking the petition's approval, the Director concluded that the Petitioner had resolved the inconsistencies between Section J of the labor certification, the employment letter, and the Beneficiary's 2007 Form G-325A. However, the Petitioner did not resolve inconsistencies between the Beneficiary's 2001 Form G-325A and the other evidence in the record, therefore the Petitioner did not establish that the Beneficiary possessed the minimum experience required.

On appeal, the Petitioner asserts that the Beneficiary possesses the 24 months of experience required for the offered position and again details the inadvertent typographical errors and corporate events that lead to inconsistencies in the Beneficiary's employment history. The Petitioner further asserts that any inconsistencies in the Beneficiary's employment history have been resolved and that none of these inconsistencies was made with "purposefulness and intention."[10]

On appeal, upon review of the entire record, we conclude that the Petitioner's explanation of corporate transactions resolves the inconsistencies in the Beneficiary's 2001 Form G-325A. The Petitioner has established by a preponderance of the evidence that the Beneficiary possessed the required combination of "programs/educ[ation] . . . determined equiv[alent]" to a U.S. bachelor's degree as he has a U.S. master's degree and at least 24 months of experience as a computer software professional as of the priority date, thus qualifying him for the offered position and the classification of skilled worker. Therefore, this portion of the Director's decision is withdrawn.

V. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE

To be eligible for the classification it requests for the beneficiary, a petitioner must establish that it has the ability to pay the proffered wage stated in the labor certification. 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].

As indicated in the above regulation, the Petitioner must establish its continuing ability to pay the proffered wage from the priority date of the petition onward. The priority date in this case is June 21, 2006. The labor certification states that the wage offered for the job of software consultant is $70,000 per year.

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the beneficiary was employed and paid by the petitioner during the period following the priority date. A petitioner's submission of documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage for the time period in question, when accompanied by a form of

[10] In its brief on appeal the Petitioner incorrectly states that "USCIS also found that the record established that the Beneficiary had willfully misrepresented material facts regarding the experience he used to qualify for the job offered ...," and references that USCIS made a finding of misrepresentation under section 212(a)(6)(C)(i) of the Act. The Director's NOR however, does not make a finding of fraud or willful misrepresentation against any party in these proceedings. Similarly, in a lawsuit filed by the Beneficiary in a separate matter, the Beneficiary erroneously asserts that USCIS "invalidated the [labor certification] pursuant to 20 C.F.R. § 656.30(d) ..." However, the Director's NOR does not invalidate the labor certification in the matter before us.

evidence required in the regulation at 8 C.F.R. § 204.5(g)(2), may be considered proof of the petitioner's ability to pay the proffered wage.

Absent evidence that the Petitioner has paid the Beneficiary a salary equal to or above the proffered wage from the priority date onward, USCIS will generally examine the net income and net current assets figures recorded on the petitioner's federal income tax return(s), annual report(s), or audited financial statements(s). If either of these figures, net income or net current assets, equals or exceeds the proffered wage, or the difference between the proffered wage and the amount paid to the beneficiary in a given year, the petitioner would ordinarily be considered able to pay the proffered wage during that year.

When a petitioner has filed other I-140 petitions, however, it must establish that its job offer is realistic not only for the instant beneficiary, but also for the beneficiaries of its other I-140 petitions (I-140 beneficiaries). A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977). Accordingly, a petitioner must demonstrate its ability to pay the combined proffered wages of the instant beneficiary and every other I-140 beneficiary from the priority date of the instant petition until the other I-140 beneficiaries obtain lawful permanent resident status. *See 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).[11]

With the initial filing of the petition on August 18, 2006, the Petitioner submitted a portion of its 2005 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, and pay stubs it issued to the Beneficiary in 2006.

In issuing the NOIR, the Director determined that the record did not include regulatory prescribed evidence of the Petitioner's ability to pay the proffered wage for 2006, the year of the priority date.

In response to the NOIR, the Petitioner submitted the first four pages of its 2006 IRS Form 1120S and the IRS Form W-2, Wage and Tax Statement, it issued to the Beneficiary in 2006. However, in his decision the Director noted that the 2006 tax return was incomplete and portions were distorted and not clearly legible, which cast doubt on its credibility. Although a later submitted copy of the 2006 tax return is legible and complete, we cannot conclude that the Petitioner has affirmatively established its ability to pay the proffered wage and we will remand the matter to the Director for further consideration.

In this case the record indicates that the Beneficiary was employed by the Petitioner from September 2005 to at least July 31, 2007 (the date the Beneficiary signed Form G-325A). The record includes IRS Form W-2, which might normally demonstrate that the Petitioner paid the Beneficiary $42,240 in 2006, which is slightly more than half of the proffered wage. However, other evidence in the record casts doubt on the actual amount paid to the Beneficiary in 2006.

[11] 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.

The record includes copies of two pay stubs that the Petitioner purportedly issued to the Beneficiary on January 7, 2005 (check number 11162) and January 21, 2005 (check number 11163). The initial filing also includes copies of pay stubs and paychecks issued to the Beneficiary in May, June, and July 2006 (with check numbers 11633, 11677, 11691, 11711). The pay stubs in the record contain several inconsistencies. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. at 591-592.

First, the successive sequence of the two checks issued two weeks apart in January 2005 casts doubt as to the actual issuance of these checks. Where the Petitioner claimed to have more than 20 employees during this time, it is expected that additional checks would have been issued during this two-week period. In contrast, we note that the check numbers in 2006, also issued two weeks apart, are not successive: check 11677 was issued on June 9, 2006, and check 11691 was issued on June 26, 2006. Viewing these two series of checks together, without explanation, this casts doubt as to the actual employment of and payment of wages to the Beneficiary during this time.[12]

The 2006 pay stubs reflect an hourly wage paid to the Beneficiary of $30. Section J of the labor certification states that the Beneficiary was employed with the Petitioner at 40 hours per week from September 6, 2005 to at least the date of filing on June 21, 2006.[13] At the rate of $30 per hour, 40 hours per week, the Beneficiary would have earned approximately $30,000 in the first six months of 2006. However, the pay stub dated June 26, 2006 reflects year-to-date earnings of only $9,600. Further, as reflected on the 2006 Form W-2, the Petitioner paid the Beneficiary total wages of $42,240. The amount of wages paid in 2006 indicates that the Beneficiary was employed less than full-time in that year, which is inconsistent with the claim of full-time employment on the labor certification.

The pay stub dated July 21, 2006 reflects check number 11736. However, the accompanying paycheck reflects check number 3184 and is dated July 25, 2006. Further, the July 25, 2006 paycheck was drawn on [redacted] Bank in [redacted] Michigan, while the other paychecks were drawn on [redacted] Bank in [redacted] Michigan. Additionally, the pay stub dated May 12, 2006 reflects current wages of $2,400 and year-to-date wages of the same amount, indicating that the Beneficiary had not earned wages before May 2006. This is inconsistent with the Beneficiary's employment history in Section J of the labor certification claiming that he was employed with the Petitioner from September 2005, including five months in 2006 before the date of this pay stub.

Although the immigrant petition does not require employment with the Petitioner before the Beneficiary is granted lawful permanent residence, the discrepancies in the Petitioner's pay records issued to the Beneficiary also cast doubt on the accuracy of the Beneficiary's claimed employment history with the Petitioner, including his claim to have been employed full-time in the offered position with the Petitioner prior to the filing of the labor certification, and to have been paid wages as of the priority date.

[12] The record does not include IRS Form W-2 issued to the Beneficiary in 2005.

[13] The record does not indicate if and when the Beneficiary's employment with the Petitioner terminated. However, the Beneficiary attested on Form G-325A, signed on July 31, 2007, that he was still employed with the Petitioner on that date.

Based on the current record we cannot determine the amount of wages that the Petitioner paid the Beneficiary in 2006. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, *Id*. Accordingly, the Petitioner has not established its continuing ability to pay the proffered wage based on wages paid to the Beneficiary from the priority date onward.

Here, the record also includes the Petitioner's IRS Form 1120S for 2006. Although the tax return demonstrates the Petitioner's 2006 net income and net current assets greater than $27,760, 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 at 124. USCIS records show that the Petitioner has filed Form I-140 petitions for other beneficiaries in 2006. 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.

In his decision, the Director did not address the inconsistencies in the record or the Petitioner's ability to pay multiple beneficiaries. In view of this deficiency, we will remand this matter for further consideration. The Director, at his discretion, may issue a new NOIR to both the Petitioner and the Beneficiary to request any other documentation deemed relevant in determining the Petitioner's ability to pay the proffered wage. The Petitioner may also submit materials in support of the factors discussed in *Matter of Sonegawa*, 12 I&N Dec. 612, at 614-15, which allows the Director to consider the totality of the circumstances affecting the Petitioner's ability to pay the proffered wage. [14]

VI. CONCLUSION

The Petitioner has established that the labor certification supports the requested classification of skilled worker, pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), and that the Beneficiary meets the minimum requirements for the offered position and for the requested classification. This portion of the Director's decision is withdrawn. However, the Petitioner has not established that the Beneficiary is eligible for the requested benefit in all respects, including that it had the ability to pay the proffered wage to all of its beneficiaries from the priority date. The record also includes unresolved inconsistencies with respect to the Beneficiary's claimed employment with and wages paid by the Petitioner. Therefore, the matter is remanded to the Director for further consideration of these issues.

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

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[14] Although the Beneficiary has ported his employment to a new employer, as identified in Form I-485 Supplement J, in order for the Beneficiary to benefit from the Act's job portability provisions, the Form I-140 must be approved, and it may only be approved if the record shows that the Petitioner met the ability to pay requirement at the time of filing and that the job opportunity was *bona fide*. *See* 8 C.F.R. § 245.25(a)(2)(B)(*1*); *see Herrera v. USCIS*, 571 F.3d 881, 887 (9th Cir. 2009) (explaining that, "in order for a petition to 'remain' valid, it must have been valid from the start"); *see also Matter of Al Wazzan*, 25 I&N Dec. 359, 367 (AAO 2010) (holding that a beneficiary of a portable petition must have been "entitled" to the requested classification).