U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23133591

Date: NOV. 29, 2022

Certification of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional

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

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval, concluding that the Petitioner did not establish that it had the ability to pay the proffered wage to the Beneficiary, or that its job offer was *bona fide*. The Petitioner appealed the revocation, and we withdrew the Director's decision and remanded the matter for consideration of whether the Beneficiary was eligible to participate in revocation proceedings.[1]

The Director issued a new Notice of Intent to Revoke to both the Petitioner and the Beneficiary and only the Beneficiary provided a response. The Director again revoked the petition's approval concluding that the record did not establish that the Petitioner was a successor-in-interest to the entity that filed the labor certification, or that it made a *bona fide* job offer to the Beneficiary. He certified his decision to our office for review pursuant to our order on remand. *See* 8 C.F.R. § 103.4(a)(1).

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 affirm the Director's decision to revoke the petition's approval.

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] Beneficiaries generally cannot file appeals or motions in visa petition proceedings. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B).

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 Form I-485, Application to Register Permanent Residence or Adjust Status, on September 8, 2007. In a letter dated April 21, 2015, the Beneficiary notified USCIS of his request to port his employment to his own company, [redacted] established on May 27, 2008.[2] The Director's new NOIR is dated July 27, 2020 and was issued to the Petitioner and the Beneficiary. The Director issued the decision to both the Petitioner and the Beneficiary on the basis of USCIS' "favorable determination on the portability request." Therefore, the Beneficiary is considered an affected party in these revocation proceedings.

I. 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 U.S. Citizenship and Immigration Services (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.

Pursuant to the statutory framework for the granting of immigrant status, any United States employer desiring and intending to employ an alien entitled to immigrant classification under the Act may file a petition for classification. Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F); *see* 8 C.F.R. § 204.5(c). Such petitions must be accompanied by a labor certification from the DOL. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5); *see also* 8 C.F.R. § 204.5(l)(3)(i). The Petitioner must intend to employ a beneficiary under the terms and conditions of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming denial where, contrary to an accompanying labor certification, a petitioner did not intend to employ a beneficiary under the terms of the labor certification); s*ee also Matter of Sunoco Energy Dev. Co.*, 17 I&N Dec. 283, 284 (Reg'l Comm'r 1979) (affirming a petition's denial under 20 C.F.R. § 656.30(c)(2) where the labor

[2] The Beneficiary's request to port his employment was submitted one month after the Director issued the first NOIR in 2015. The Beneficiary's company, [redacted], was established 10 days after the Petitioner was administratively dissolved in May 2008.

certification did not remain valid for the intended geographic area of employment). Because the filing of a labor certification establishes a priority date for any immigrant petition later based on the labor certification, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977).[3]

A labor certification remains valid only for the "particular job opportunity" stated on it. 20 C.F.R. § 656.30(c)(2). A petitioner may, under certain circumstances, rely on a labor certification approved for another business entity if the petitioner is a successor in interest to the original labor certification employer. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). Establishing a successor-in-interest relationship under *Matter of Dial Auto* is a three-part test. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor employer. Second, the petitioning 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. *Id*.

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). 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 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.*

II. ANALYSIS

A. Procedural History

In certifying the decision to us, the Director concludes that the petition's approval is revoked because the record does not establish that the Petitioner is a successor-in-interest to the labor certification employer, and that record does not establish a *bona fide* job offer. The Petitioner and the Beneficiary were notified of the opportunity to submit a brief or other written statement for consideration. The Beneficiary provided a statement and additional evidence, as well as copies of evidence already in the record. We agree with the Director for the reasons set forth below, as the Petitioner has not fully described and documented the transaction transferring ownership of all, or a relevant part of, the

[3] USCIS is required to approve an employment-based immigrant visa petition only where it is determined that the facts stated in the petition, which incorporates the labor certification, are true and the foreign worker is eligible for the benefit sought. Section 204(b) of the Act, 8 U.S.C. § 1154(b).

predecessor employer. Additionally, the petitioning successor has not demonstrated that the job opportunity is the same as originally offered on the labor certification in the form of a full-time position as an accountant.

The underlying labor certification for the offered position of accountant was filed on July 28, 2006, and lists the following information about the employer in Part C of ETA Form 9089, Application for Permanent Employment Certification:

C.1	Employer's Name	[redacted]
C.5	Number of employees	5
C.6	Year commenced business	1981
C.7	FEIN (Federal Employer Identification Number)	[redacted]

The Form I-140 was filed on September 8, 2007, and lists the following information about the Petitioner in Parts 1 and 5 of Form I-140:

1	Company or Organization Name	[redacted]
5.2	Current number of employees	1
5.2	Date established	06/01/1981
1	IRS Tax #	[redacted]

The Form I-140 included an attachment titled "Addendum to I-140" stating:

> The Petitioner was restructured into a form of Corporation in 2006 and a new Employer Identification Number was assigned. However, [redacted] has to be considered the same entity or the successor-in-interest of [redacted] for the following reasons: 1) the owner of [redacted] selected to file Federal Tax Return for an S Corporation in 2006; 2) There has been no changes in ownership and operation of the business except election of S Corporation, and 3) the Petitioner assumed all of the rights, duties, obligations and assets of [redacted] [redacted]

The petition included a 2006 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, identifying [redacted] as an S Corporation incorporated on January 1, 2006, with FEIN [redacted] It also submitted the 2005 IRS Form 1040, U.S. Individual Income Tax Return, of [redacted] identifying [redacted] as the sole proprietor of [redacted] [redacted] with FEIN [redacted]

In the initial NOIR, dated March 25, 2015, the Director notified the Petitioner of the inconsistencies in the name, FEIN, date of establishment and corporate structure, and noted that the record did not demonstrate that the Petitioner was a successor-in-interest to the original labor certification employer. The Director further noted that the Georgia Secretary of State website listed the I-140 Petitioner as administratively dissolved on May 18, 2008. The Director also identified additional inconsistencies that "should have warranted further inquiry at the time the petition was approved," including:

- The Petitioner's address, also the address where the Beneficiary will work, is a residential address.
- The labor certification does not list any of the Beneficiary's work experience in Part K, which contradicts the Form G-325A, Biographic Information, signed on July 3, 2007, and submitted with the Beneficiary's Form I-485, listing the Beneficiary's employment as president of his own company, [redacted] since September 2003.

In response to the 2015 NOIR, the Petitioner provided a letter from its shareholder, [redacted] In the letter [redacted] explains that he and his spouse operated [redacted] from 1981 until 2006, where he was accountant and his spouse was office manager and bookkeeper. He states that in 2006 he realized for the first time that his spouse was listed as the sole proprietor of the business, and for this reason he incorporated the business as an S Corporation under the name of [redacted] on February 22, 2006. He asserts that [redacted] continued to operate as a sole proprietorship at the time the labor certification was filed on July 28, 2006, and that [redacted] was not in operation at that time, although he had incorporated the business five months earlier. He asserts that [redacted] is a successor-in-interest "because it did assume all rights, duties, obligations, and assets of [redacted]" He states that the only change was that "the business was transferred from a sole proprietor to a corporate business," and that the Petitioner provides "the same accounting services to the same customers at the same location."

[redacted] also explained that the business was listed as administratively dissolved in 2008 because he failed to file the Petitioner's annual registration with the Georgia Secretary of State. And although he paid a fee to have the business reinstated, he did not know why the corporate status was never updated. He asserts that the Petitioner continued to operate until September 2012 when he retired.[4]

To address the number of employees and the business address, [redacted] states that he had "2-3 part-time employees paid by 1099s in 2006," and that the employees worked in the basement of his home, which was converted into office space. [redacted] also states that he "omitted by mistake" the Beneficiary's prior work experience from the labor certification. because the position did not require work experience and the Beneficiary "was already qualified."

In the original NOR, the Director stated that "USCIS will not further contest the successor-in-interest aspect of this petition as a basis for the revocation." However, he concluded that the Petitioner had not established its ability to pay the proffered wage to the Beneficiary in each year of its operation since the priority date. The Director also concluded that the inconsistencies and discrepancies in the record "cast doubt on the reliability of the information presented, to include the legitimacy of the job offer." He stated that he was not persuaded that [redacted] an accountant, was unaware of the ownership structure of the business. He also noted that [redacted] assertion that the Petitioner employed five individuals, including himself and his spouse, was not supported by the record. He further noted that the inaccurately reported number of employees and omitted prior work experience

[4] As noted above, although [redacted] retired in 2012, the Beneficiary did not request to port to another employer until April 2015, after the Petitioner's receipt of the first NOIR.

on the labor certification, "would be relevant information for the [DOL] to have considered during the labor certification process."[5]

In the new NOIR, dated July 27, 2020, the Director again raises the issue of successor-in-interest, as well as the Petitioner's ability to pay the proffered wage and the previously noted inconsistencies. The Petitioner did not submit a response to the 2020 NOIR. In the Beneficiary's response, he states that USCIS is precluded from revisiting the successor-in-interest issue as a basis for revocation.[6]

The Beneficiary states that the petition's approval should not be revoked on the basis of successor-in-interest because the Director "agreed not to raise the issue again." He states that he is unable to further address the successorship because he was unable to contact the Petitioner's owner, [redacted], and no new evidence to establish successorship is submitted. He further states that the Director "interpreted the facts arbitrarily and with prejudice [to conclude] that I never intended to work for the petitioner and there was no bona fide job offer."

B. Successor-in-Interest

As noted above, establishing a successor-in-interest relationship under *Matter of Dial Auto* is a three-part test. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor employer. Second, the petitioning 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. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. at 481.

While the Director stated in the initial NOR that he "would not further contest the successor-in-interest aspect of this petition," the Director was not precluded from raising this issue on remand. In our appellate decision we instructed the Director to review the entire record and issue a new decision. In the new NOIR, the Director properly provided notice that a successor-in-interest relationship must be established. The new NOIR was issued to both the Petitioner and the Beneficiary and an opportunity to address this was provided.

Here, the record establishes that the Petitioner is a different entity than the labor certification employer, with different FEINs and different corporate structure. The record also demonstrates that the labor certification employer was established in 1981, that the Petitioner was established on February 22, 2006, and that the Petitioner was administratively dissolved on May 16, 2008.[7] These facts are not contested.

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[5] Section K of ETA Form 9089 asks that the employer, "List all jobs the alien has held during the past 3 years. Also list any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification."

[6] He also states that USCIS should not have issued the new NOIR to the Petitioner, as this was contrary to our instructions in the appellate decision remanding the matter, where we instructed the Director to issue a new NOIR to the Beneficiary. However, the regulations require that a petitioner be given notice and an opportunity to respond to a NOIR. *See* 8 C.F.R. § 103.2(b)(16)(i). In *Matter of V-S-G-*, we noted that the original petitioner remains an affected party under the regulations and stated that "we will presume the original petitioner's potential interest in the participation in future proceedings and continue to permit them to participate in the administrative proceedings." *Matter of V-S-G- Inc.*, Adopted Decision 2017-06.

[7] If a petitioner is no longer in business, then no *bona fide* job offer exists to support the petition.

The petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor employer. Here, [redacted] filed the labor certification on July 28, 2006, five months after the I-140 Petitioner, [redacted] was established. The petition was approved on October 8, 2008, three months after the purported successor company, [redacted] was administratively dissolved. The record does not include evidence to support [redacted] assertions that the sole proprietorship, [redacted] continued to exist at the time the labor certification was filed to support a validly filed labor certification. Nor does the record include evidence that the sole proprietorship continued to exist after the incorporation of [redacted] but before it became operational. Based on the record, [redacted] last filed a tax return as a sole proprietor for tax year 2005. The record does not include a 2006 tax return for [redacted] or other evidence that it continued to operate at any time in 2006 when the labor certification was filed to form the basis of a valid job offer.

The record also does not include evidence to support [redacted] statements that the purported successor, [redacted] was not in operation at the time the labor certification was filed, despite having been incorporated five months earlier.[8] Although [redacted] asserts that the business operation was continuous and the transfer of the business to a corporation did not require any documentation, he does not explain why he purportedly operated his business in two different structures simultaneously, or why the purported successor, [redacted] was not in operation immediately upon incorporation, or even five months later when the labor certification was filed. Therefore, we conclude that the record does not fully describe and document the transaction transferring ownership of [redacted]

The petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. The record does not include evidence documenting when [redacted] actually began its operations or what additional steps were required to begin operations after the certificate of incorporation was issued. [redacted] delayed operations of more than five months contradicts [redacted] statement that the only change to the business was from sole proprietor to corporation. As the Petitioner did not document that the sole proprietor, [redacted] was fully operational at the time the labor certification was filed, or that [redacted] the purported successor, was fully operational throughout the adjudication of the petition, the petitioning successor has not demonstrated that the job opportunity is the same as originally offered on the labor certification in the form of a full-time position as an accountant.

The petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. As noted above, the record does not include evidence to support [redacted] assertions that he continued operating the successor business after it was administratively dissolved in 2008. Although he provides a copy of a check to the Georgia Secretary of State that he asserts was payment for reinstatement of corporate status in 2009, he does not explain how he was able to continue operating the business without confirmation of reinstatement or why the state's website does

[8] We note that the DOL addresses corporate changes during the course of the labor certification process, requiring that an employer conduct recruitment using its legal name at the time of recruitment, and file the labor certification under its legal name at the time of submission. *See* DOL, Office of Foreign Labor Certification, "OFLC Frequently Asked Questions and Answers," https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#q!143 (visited November 28, 2022). Here, the labor certification states that the recruitment was conducted in February 2006, a few days before [redacted] was incorporated. However, the record does not include evidence explaining why [redacted] was not listed as the employer on the labor certification at the time of filing.

not indicate any correspondence or action taken after administrative dissolution in 2008. Although the record includes the I-140 Petitioner's tax returns for 2006 through 2009 and 2012, and tax transcripts for 2010 and 2011, the returns reflect decreasing gross receipts in each year, from $118,160 in 2006 to $39,800 in 2012. The tax transcripts do not include gross receipts but do reflect a decrease in net current income from $56,265 in 2008 to $45,529 in 2010. This significant decrease tends to indicate, in the absence of any contrary evidence, the winding down of a business. However, without complete tax returns for each year or other evidence that the Petitioner's corporate status was reinstated after May 2008 and the business continued operations, we cannot conclude that the Petitioner was in valid operating status and eligible for the immigrant visa throughout the adjudication of the I-140 and at the time the petition was initially approved.

In adjudicating immigration benefit requests, USCIS regularly reviews affidavits, testimonials, and letters from both laypersons and recognized experts. To be probative, a document must generally provide: (1) the nature of the affiant's relationship, if any, to the affected party; (2) the basis of the affiant's knowledge; and (3) a specific - rather than merely conclusory - statement of the asserted facts based on the affiant's personal knowledge. *Matter of Chin*, 14 I&N Dec. 150, 152 (BIA 1972); *see also* 8 C.F.R. § 103.2(b)(2)(i) (requiring affidavits in lieu of unavailable required evidence from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances"); *Matter of Kwan*, 14 I&N Dec. 175, 176-77 (BIA 1972); *Iyamba v. INS*, 244 F.3d 606, 608 (8th Cir. 2001); *Dabaase v. INS*, 627 F.2d 117, 119 (8th Cir. 1980). A petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). Probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Here, the record includes only testimonial evidence from the Petitioner's owner in attempt to establish that a successor-in-interest relationship exists, without providing independent, objective evidence in support of this testimony. Based on inconsistencies and discrepancies in the explanation provided, further independent evidence is required. The record does not include tax returns or other records for both entities in 2006 to demonstrate that both entities were operating simultaneously at the time the labor certification was filed, and to corroborate [redacted] assertion of a valid job offer. Rather, the record demonstrates that the labor certification employer [redacted] filed its last tax return for tax year 2005, and the Petitioner [redacted] began filing its tax return upon its incorporation in 2006 and each year thereafter. Inconsistencies must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The record does not establish that the Petitioner was a successor-in-interest to the labor certification employer. Therefore, we affirm the Director's decision to revoke petition's approval on this basis.[9] However, we will withdraw the portion of the Director's decision on the issue of whether the Beneficiary intended to accept the Petitioner's job offer.[10]

C. Beneficiary Qualifications

Although not discussed by the Director, the record does not demonstrate that the Beneficiary meets the minimum qualifications for the offered position as described on the labor certification. A petitioner for a professional must demonstrate that a beneficiary holds at least a U.S. bachelor's degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(3)(ii)(C). The evidence must include "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." *Id.*

A petitioner must establish a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date.[11] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

Here, the accompanying labor certification states the minimum requirements of the offered position of accountant as a U.S. bachelor's degree, or a foreign equivalent degree, in accounting, statistics or related field. No experience is required.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in applied statistics from "[redacted] University" in South Korea, completed in 1983. As evidence of this credential the record includes copies of academic transcripts issued to the Beneficiary by [redacted] University indicating that the Beneficiary was awarded a bachelor of arts degree in applied statistics in 1983, and a master of business administration degree in financial accounting in 1988. The record also includes a letter on [redacted] University letter head, signed by the Dean of Academic Affairs and dated September 9, 1998, stating that the Beneficiary "graduated on February 21, 1983, from the department of applied statistics, college of business and economics, [redacted] University, with the degree of bachelor of arts."

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[9] Although the Beneficiary has ported his employment to his own company, 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).

[10] We recognize that that the Director raised significant if somewhat speculative concerns, including that the Beneficiary established his own accounting business in May 2008, a few days after the Petitioner was administratively dissolved. While not sufficiently developed for purposes of this visa petition, the Director is not barred from further inquiry, investigation, or the development of questions for consular processing or adjustment of status proceedings. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959) (stating that the immigrant visa petition is not the appropriate stage of the process for questions regarding admissibility).

[11] This petition's priority date is July 28, 2006, the date the DOL received the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The letter and academic transcripts are all in English. The record does not include copies of the original documents in their original language. Further, the record does not include a U.S. academic equivalency in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(C) to establish the U.S. equivalency of the foreign bachelor's degree in applied statistics. This evidentiary deficiency must be addressed in any future filings.

III. CONCLUSION

The record does not demonstrate the Petitioner's assumption of essential rights and obligations of the labor certification employer and indicates that the Petitioner's transition to employer predated the filing of the labor certification application. The Petitioner therefore has not established its claimed successor-in-interest relationship to the employer. We will affirm the Director's decision on this basis for the foregoing reasons. Contrary to section 291 of the Act, 8 U.S.C. § 1361, the Petitioner did not meet its burden of establishing eligibility for the requested benefit.

ORDER: The approval of the petition is revoked.