U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22651410

Date: FEB. 22, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, an Oriental rug, carpet, and flooring company, seeks to employ the Beneficiary as an Oriental rug repairer. It requests classification of the Beneficiary as a skilled worker under the third preference visa classification. 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 noncitizen for lawful permanent residence 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 Beneficiary met the minimum experience requirements for the offered job. The Director also revoked the approval of the petition due to an undisclosed relationship between the Beneficiary and the Petitioner's owner and found that the Petitioner and the Beneficiary had committed willful misrepresentation of a material fact. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that insufficient U.S. workers are able, willing, qualified, and available for a position, and that the employment of a noncitizen will not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A).

Second, the employer must submit the certified labor application with an immigrant visa petition for approval from U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification.

Third, the noncitizen may 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.

However, USCIS may revoke a petition's approval for "good and sufficient cause" at any time before a beneficiary obtains lawful permanent resident status. Section 205 of the Act, 8 U.S.C. § 1155. The realization that a petition was approved in error may be good and sufficient cause for revoking its approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

USCIS properly issues a notice of intent to revoke (NOIR) a petitioner's approval if the unexplained and unrebutted record at the time of the NOIR's issuance would have warranted the petitioner's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). The NOIR provides the opportunity to submit evidence in support of the petition and in opposition to the alleged grounds for revocation. 8 C.F.R. § 205.2(b). If the NOIR response does not rebut or resolve revocation grounds stated in the notice, USCIS properly revokes a petition's approval. *Matter of Estime*, 19 I&N Dec. at 451-452.

Any noncitizen who seeks to procure, sought to procure, or has procured a benefit under the Act by fraud or willfully misrepresenting a material fact is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i).

II. ANALYSIS

A. Beneficiary Qualifications

The first issue on appeal is whether the Director properly revoked the approval of the petition with regards to the Beneficiary's qualifications for the offered position.

A petition for a skilled worker must be accompanied by evidence that the noncitizen meets the educational, training, and/or experience requirements as well as any other requirements of the labor certification as of the priority date.[1] 8 C.F.R. § 204.5(l)(3)(ii)(B). Evidence of the noncitizen's qualifying experience or training should be in the form of letters from relevant employers or trainers and include the name, address, and title of the writer, and a specific description of the duties performed by the noncitizen or of the training received. 8 C.F.R. §§ 204.5(g)(1), 204.5(l)(3)(ii)(A).

The labor certification in this case states that the offered position requires 24 months of experience in the job offered. It further states that the Petitioner will not accept any alternative experience or education, and that no other education, experience, or skills are required for the position. The labor certification states that the Beneficiary qualifies for the offered position based on her employment as a rug and carpet repairer with [redacted] Iran from 2001 to 2009. To support this claim, the Petitioner submitted an employment verification letter from [redacted]

In the NOIR, the Director noted that the employment information the Beneficiary had given in past nonimmigrant visa (NIV) applications contradicted the labor certification claim that she had worked at [redacted] from 2001 to 2009. In the notice of revocation (NOR), the Director found that the record,

[1] The priority date of this position is the date the underlying labor certification was filed with DOL. 8 C.F.R. § 204.5(d). Here, the priority date is April 28, 2016.

including the evidence submitted in response to the NOIR, did not establish the Beneficiary's qualifications for the offered position. On appeal, the Petitioner states that previously-submitted documentation establishes the Beneficiary's qualifying work experience. Upon a review of the record, we conclude that it does not establish that the Beneficiary met the labor certification's experience requirements as of the priority date.

First, the Petitioner has not provided acceptable documentation of the Beneficiary's work experience with [redacted] The experience letter from [redacted] does not state the writer's name and title, as required by 8 C.F.R. § 204.5(l)(3)(ii)(A). It therefore does not establish the Beneficiary's experience, and the petition's approval was properly revoked on this basis. Furthermore, even if we were to accept the experience letter, which we do not, the record contains several unresolved material inconsistencies regarding when the Beneficiary worked at [redacted]

Where there are inconsistencies in the record, the Petitioner must resolve such inconsistencies 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 requested immigration benefit. *Id.* As explained below, the Petitioner has not provided sufficient reliable evidence of the Beneficiary's work experience to resolve the contradictions in the record regarding that experience.

According to the labor certification filed with the petition, the Beneficiary's work history[2] is as follows:

- [redacted] Iran. [redacted] Sales Director. March 2011 to April 2015.
- [redacted] Iran. [redacted] Rug and Carpet Repairer. October 2001 to December 2009.

The labor certification describes the Beneficiary's duties at [redacted] as "Sales Director involved in sales of products." Her duties at [redacted] are described as repairing and remodeling carpets and rugs. Both positions are described as having 40 hours a week of work. According to the Petitioner, the Beneficiary qualifies for the offered position due to her experience as a rug repairer with [redacted]

The Beneficiary applied for nonimmigrant tourist visas (NIVs) to the United States on seven occasions between July 2012 and February 2016. In each application, she was required to state her current job as well as previous employment.

In the first application of July 2012, the Beneficiary stated the following employment history:

[2] The labor certification instructions state that petitioners should list all jobs held by the beneficiary in the past three years, whether or not they are related to the offered job opportunity, and to list all other experience which qualifies the beneficiary for the offered position. U.S. Dep't of Labor, ETA Form 9089 – Instructions at 9, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Form%20ETA-9089-Instructions-August-2021.pdf.

- [redacted] Iran. Sales Manager. Current position.
- Self-employment at dental laboratory, [redacted] Iran. Managing Director, May 1997 to June 2012.

In the five applications of September 2012, November 2013, August 2014, November 2014, and December 2014, the Beneficiary only listed her ongoing sales manager position at [redacted] and answered "no" to the question about whether she had any previous employment.

In the seventh application of February 2016, the Beneficiary stated the following employment history (capitalization changed for readability):

- [redacted] Iran. Sales Manager and "any work related [to the] repair or sales of Persian…and hand made rugs". Current position.
- [redacted] Iran. "I darned and repaired Persian carpet for a long time…I became the GM for all the sales and repair of the company." April 1986 to January 2013.

Finally, in her immigrant visa application of October 2017, the Beneficiary stated the following employment history:

- [redacted] Iran.[3] Sales.
- [redacted] Iran. October 2001 to December 2009.

The Beneficiary never disclosed her work at [redacted] until her 2016 labor certification and NIV application, despite having applied for six previous tourist visas that requested her employment history. She has also provided contradictory accounts of when she was employed there. In the 2016 NIV application, she stated that she worked at [redacted] from 1986 to 2013, but in the labor certification and immigrant visa application she stated she worked there from October 2001 to December 2009.

Furthermore, much of the time the Beneficiary claimed to have worked at [redacted] overlaps with time she previously claimed she was employed and/or living in [redacted] which is over 500 miles from [redacted] The July 2012 NIV application states that the Beneficiary managed her own dental laboratory in [redacted] from 1997 to 2012, a time period that overlaps heavily with the times she claimed to work for [redacted] Similarly, the 2017 immigrant visa application states that the Beneficiary lived in [redacted] from 1980 to 1992 and from 2009 to 2016, which overlaps with much of the time she claimed to work at [redacted] in her 2016 NIV application. The July 2012 and September 2012 NIV applications also state that the Beneficiary's current position at the time was at [redacted] and make no mention of [redacted] despite the Beneficiary's claim in 2016 that she was still working at [redacted] during those times. Finally, all of the Beneficiary's visa petitions claim that she attended university in [redacted][4] from 2007 to 2010 and provide no explanation for how she did so while working at [redacted] on a full-time basis.

[3] All of the Beneficiary's other visa petitions state that [redacted] is in [redacted]

[4] All of the Beneficiary's NIV petitions state that she attended [redacted] University and studied dental prostheses. However,

On appeal, the Petitioner states that the employment certification letter from [redacted] and the Beneficiary's certification as a rug weaver should suffice to demonstrate the Beneficiary's qualifications for the offered position. The Petitioner further states that the employment at [redacted] was not material to any of the Beneficiary's NIV applications and was innocently and inadvertently left out because those applications were prepared by a travel agent. Similarly, the Beneficiary's statement in response to the NOIR, which is resubmitted on appeal, claims that both the omission of [redacted] on six of her NIV applications and the varying dates given for her employment there were inadvertent or due to a translation error made by the visa application preparer.

First, as noted above, the employment certification from [redacted] does not meet the requirements at 8 C.F.R. § 204.5(g)(1) and therefore does not establish eligibility. Second, we note that the Beneficiary certified in all of her NIV applications that she had prepared the forms herself and without anyone's aid, which contradicts her statement in response to the NOIR. The record does not contain any independent, objective documentation resolving this inconsistency. *Matter of Ho*, 19 I&N Dec. at 591-592.

Furthermore, even if we accepted that a preparer completed the NIV applications, which we do not, the Beneficiary signed all of these applications, certifying that she read and understood the questions on the forms and that the answers were true and correct to the best of her knowledge and belief. The presence of the Beneficiary's signature on these forms creates a strong presumption that she knew their contents and assented to them. *See Matter of A.J. Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). The Beneficiary's unsupported claim that the contents of her NIV applications were the responsibility of a preparer is insufficient to overcome this presumption. The claims regarding the preparer also do not explain why the 2012 NIV application stated that the Beneficiary ran her own dental laboratory in [redacted] from 1997 to 2012.[5] This time encompasses the entire period she now claims she worked for [redacted] The Petitioner and Beneficiary have not resolved this discrepancy with reliable evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-592.

The only documentation of the Beneficiary's work at [redacted] is the experience letter, which does not meet the requirements of 8 C.F.R. § 204.5(g)(1), and the Beneficiary and Petitioner's statements. The record also includes an undated[6] artist's union card identifying the Beneficiary as a "hand made rug weaver and repairer." The record does not state the requirements for obtaining such a card. The

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her immigrant visa petition states that she attended [redacted] University and took a "general" course of study. While the Beneficiary's education is not material to her qualifications for the offered position, it is another unexplained inconsistency between her immigrant visa petition and her NIV petitions which lowers the credibility of the other evidence offered in support of the benefit request. *See Matter of Ho*, 19 I&N Dec. at 591-592; *see also Matter of Chawathe*, 25 I&N Dec. at 376 ("the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

[5] The Beneficiary's statement mentions that she managed a dental laboratory but gives no information about when she held this job.

[6] The Beneficiary also submitted a copy of this card at her consular interview, and the translation of that version is dated 2017. However, this translation does not include a certification by the translator that it is complete and accurate and that the translator is competent to translate from Farsi to English, as required at 8 C.F.R. § 103.2(b)(3). Therefore, we cannot meaningfully determine whether the translated material is accurate and thus supports the petition's claims. Furthermore, even if we accepted this translation, which we do not, the fact that the card was issued after the petition was filed and many years after the Beneficiary's claimed work in rug repair limits its probative value.

card also does not mention [redacted] and so cannot establish her employment there. The record does not include any other independent, objective evidence of the Beneficiary's work history, such as pay statements or tax documents. This does not suffice to resolve the many evidentiary inconsistencies regarding the Beneficiary's work at [redacted] *Matter of Ho*, 19 I&N Dec. at 591-92. Because [redacted] is the Beneficiary's only claimed work experience in rug repair on appeal, the Petitioner has not established her eligibility for the offered position.

Additionally, as previously noted, 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. The record contains several unresolved inconsistencies regarding the Beneficiary's work at [redacted] Six of the Beneficiary's seven NIV petitions, as well as the immigrant visa petition, labor certification, and Form I-140, state that the Beneficiary worked at [redacted] as a sales manager starting in 2011, a claim the parties continue to make on appeal. However, in her February 2016 NIV application, the Beneficiary stated that her duties at the company also included work related to the repair and sales of Persian rugs. DOS records indicate that she repeated this claim at her immigrant visa interview, stating that she worked at [redacted] as a rug expert.[7] The record also includes a copy of a work experience letter from [redacted] which the Beneficiary submitted for her interview. This letter, which dates from 2019,[8] states that the Beneficiary "is engaged at this company at the capacity of expert in repair and carper (*sic*) darning." It does not mention the Beneficiary's duties as a sales manager. A DOS review of [redacted] website found that it did not mention rugs, instead stating that the company has operations in dairy, egg, and meat production, as well as property development, manufacturing, and technology.

At her immigrant visa interview, the Beneficiary verbally stated that she worked as a rug repairer and rug expert at [redacted] and submitted work experience letters confirming both of those statements. On appeal, the Beneficiary claims that she "never advised the Consular Officer that [she] worked in [redacted] in anything other than as a Sales Manager" and "never stated that [she] worked as a Rug Expert at [redacted] since 2011 and my documents and applications confirm this fact." As noted above, this contradicts the DOS interview records in her case[9] as well as the [redacted] experience letter the Beneficiary submitted to DOS, which states that she is employed there as a rug expert and repairer. The Beneficiary's statement on appeal does not resolve these contradictions, which raises doubts as to the credibility and probative value of the evidence provided to establish eligibility. *Matter of Ho*, 19 I&N Dec. at 591-592; *see also Matter of Chawathe*, 25 I&N Dec. at 376.[10]

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[7] The Beneficiary also claimed in her immigrant visa interview that she worked at [redacted] in the morning and as a freelance rug expert in the afternoon. This appears to contradict the labor certification, which states that the job at [redacted] is full-time.

[8] While the attorney letter submitted on appeal states that the Beneficiary has worked at [redacted] "from 2011 to the present," the labor certification, which the Beneficiary signed in 2017, states that she stopped working there in April 2015.

[9] The official acts of public officers are entitled to a presumption of regularity, and without clear evidence to the contrary, we presume that public officers have properly performed their duties. *See Latif v. Obama*, 666 F.3d 746, 748 (D.D.C. 2011) (citations omitted). We therefore presume that as a public official, the DOS consular officer who interviewed the Beneficiary properly performed their duties when doing so and when writing the interview notes. The Petitioner and Beneficiary have not overcome this presumption.

[10] Beyond the decision of the Director, we note that the Beneficiary's consular interview statements that she worked as a rug expert at [redacted] may constitute willful misrepresentation of a material fact. Similar concerns apply to her

The Petitioner has not provided sufficient documentation to establish that as of the petition's priority date, the Beneficiary met the work experience requirements stated on the labor certification. The approval of the petition will remain revoked on this basis.

B. Relationship Between the Beneficiary and the Petitioner

The second issue on appeal is whether the Director properly revoked the approval of the petition with regards to the undisclosed friendship and former business relationship between the Beneficiary and the Petitioner's owner. The NOIR stated that the parties had not disclosed the relationship between the Beneficiary and the Petitioner's owner in the labor certification application. In response, the Petitioner provided statements from its owner and the Beneficiary, documentation regarding their former business together, and documentation of the recruitment process for the offered position. In the NOR, the Director determined that the Petitioner had not sufficiently resolved this issue. On appeal, the Petitioner states that it was not required to disclose this relationship.

The ETA Form 9089 specifically asks at Section C.9 whether the employer is a closely held corporation, partnership, or sole proprietorship in which the Beneficiary has an ownership interest, or whether there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the Beneficiary. DOL guidance states that a familial relationship, for the purposes of this question, includes all relationships established by blood, marriage, or adoption, however distant.[11] While the Beneficiary and the Petitioner's owner are friends and once had a business relationship, the record does not support the Director's finding that they have a familial relationship that would need to be disclosed at question C.9 of the labor certification. The record also does not indicate that the Beneficiary has an ownership interest in the Petitioner that would need to be disclosed at question C.9 of the labor certification. Upon review, the Director's decision does not provide adequate grounds for this basis of revocation, and it will be withdrawn.

C. Willful Misrepresentation of a Material Fact

The third issue on appeal is whether the Petitioner and/or the Beneficiary committed willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act. In order to support a finding of willful misrepresentation of a material fact, the record must show that the party procured or sought to procure a benefit under U.S. immigration laws, that they made a false representation, that the false representation was made willfully, that the false representation was material, and that the false representation was made to a U.S. government official. *See Matter of Y-G-*, 20 I&N Dec. 794, 796-797 (BIA 1994); *Xing Yang v. Holder*, 770 F.3d 294, 303 (4th Cir. 2014). *See generally* 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policy-manual.

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statements in response to the NOIR and on appeal that she never claimed to work as a rug expert at [redacted]. Because the Beneficiary was not previously informed and put on notice of this derogatory information as grounds for a finding of willful misrepresentation, it is not part of the basis of the willful misrepresentation finding in this decision. 8 C.F.R. §§ 103.2(b)(16)(i), 205.2(b)-(c). However, these statements should be addressed in any future proceedings where the Beneficiary's admissibility is an issue.

[11] U.S. Dep't of Labor, OFLC Frequently Asked Questions and Answers, https://www.foreignlaborcert.doleta.gov/faqsanswers.cfm (click on the "familial relationships" link) (last visited Jan. 18, 2023).

The record indicates, and the Petitioner and Beneficiary do not dispute, that they sought an immigrant visa, which is a benefit under U.S. immigration laws, and that the representations in question were made to U.S. government officials. Therefore, the remaining issues are whether the Petitioner and/or Beneficiary made a false representation, and if so, whether the representation was made willfully and whether it was material.

The Director found that the Petitioner misrepresented its relationship with the Beneficiary by answering "no" to question C.9 of the labor certification form. As noted above, while the Beneficiary and the Petitioner's owner are friends, the record does not support the Director's finding that they have a familial relationship that would need to be disclosed at question C.9 of the labor certification. The record also does not indicate that the Beneficiary has an ownership interest in the Petitioner that would need to be disclosed at question C.9 of the labor certification. Therefore, the answer given to question C.9 was not a false representation by the Petitioner. For this reason, we will withdraw the Director's finding of willful misrepresentation against the Petitioner.

However, the record supports the Director's finding that the Beneficiary committed a willful misrepresentation of material fact regarding her work experience on the labor certification. As discussed above, the Beneficiary's accounts of her work at [redacted] include many unresolved discrepancies and contradictions, including a prior claim that she managed a dental laboratory in [redacted] for the entire period she now states she worked for [redacted] over 500 miles away. A false representation is an assertion or manifestation that is not in accordance with the true facts. *See generally* 8 *USCIS Policy Manual*, *supra* at J.3(C)(1). While a few minor errors or inconsistencies are not reason to question the credibility of a party's claims, the record in this case has sufficient discrepancies to raise serious concerns about the veracity of the Beneficiary's claimed work history. *See Spencer Enterprises, Inc. v. U.S.*, 345 F.3d 683, 496 (9th Cir. 2003). When there are substantial material discrepancies in a petition and the parties do not resolve them using independent, objective evidence pointing to where the truth lies, these discrepancies may lead USCIS to conclude that the claims stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591-592.

A false representation is considered material if it tends to cut off a line of inquiry that is relevant to the person's admissibility and that would have predictably disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). Because the labor certification requires two years of work experience in rug repair, the Beneficiary's experience in this area is relevant to her visa eligibility. Therefore, her claim on the labor certification regarding her work in rug repair at [redacted] is material.

A false representation is considered willful if it is made knowingly, as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true. *See Matter of Healy and Goodchild,* 17 I&N Dec. 22; *see generally* 8 *USCIS Policy Manual*, *supra* at J.3(D)(1). Because the Beneficiary signed the Form I-140, the labor certification, and all of her visa petitions, there is a strong presumption that she knew their contents and assented to them. *Matter of A.J. Valdez*, 27 I&N Dec. at 499. We therefore agree with the Director's finding that the Beneficiary made a willful misrepresentation of material fact on the labor certification.

D. Ability to Pay

Although not addressed by the Director, the record does not show that the Petitioner has the continuing ability to pay the Beneficiary's proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states that a petitioner must establish that it has the ability to pay the beneficiary the proffered wage from the priority date onward. Documentation of the ability to pay shall be in the form of copies of annual reports, federal tax returns, or audited financial statements. In appropriate cases, additional evidence may be submitted. *Id.* In the present case, the documentation should establish the Petitioner's continuing ability to pay the proffered wage of $28,059 starting on the priority date of April 28, 2016.

When determining ability to pay, USCIS first determines whether the petitioner paid the beneficiary the full proffered wage each year from the priority date. If the petitioner did not pay the proffered wage in any given year, USCIS next determines whether the petitioner had sufficient net income or net current assets to pay the proffered wage (reduced by any wages paid to the beneficiary).[12]

Because the Petitioner has never employed the Beneficiary or paid her a wage, we turn to the Petitioner's net income and net current assets to determine whether it has the ability to pay. The Petitioner initially submitted its 2016 federal tax return, which states that it had $38,060 in net income and $4,468 net current assets that year. As the Petitioner's net income was sufficient to pay the proffered wage that year, the issue of the ability to pay did not arise in the initial adjudication of the petition.

On appeal, the Petitioner submits its 2018, 2019, and 2020 federal tax returns in order to demonstrate its continuing ability to pay the proffered wage. These documents state the following:

- 2018: $40,833 net income, $10,890 net current assets
- 2019: $9,571 net income, $8,522 net current assets
- 2020: $135 net income, $10,478 net current assets

First, the record does not include a federal tax return, annual report, or audited financial statements for 2017, as required by 8 C.F.R. § 204.5(g)(2).[13] Second, the federal tax returns for 2019 and 2020 indicate that the Petitioner did not have enough net income or net current assets to pay the proffered wage.

If a petitioner's net income and net current assets are insufficient to pay the proffered wage, USCIS may, at its discretion, consider other relevant factors, such as the number of years the petitioner has been in business, the size of its operations, the growth of its business over time, its number of employees, the occurrence of any uncharacteristic business expenditures or losses, its reputation within its industry, or whether a beneficiary will replace a current employee or outsourced service. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967). However, the Petitioner

[12] 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); *Tongaptu Woodcraft Haw., Ltd. V. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Estrada-Hernandez v. Holder*, 108 F. Supp. 3d 936, 942-946 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).

[13] The NOR is dated January 10, 2022. The record does not indicate whether the Petitioner's 2021financial documents were available at the time the appeal was filed.

has not submitted any documentation regarding these factors or claimed that the totality of its circumstances establishes its ability to pay. The record indicates that the Petitioner has not established its continuing ability to pay the proffered wage from the petition's priority date.

Additionally, we note that the website of the Maryland Department of Assessments & Taxation states that the Petitioner forfeited its right to do business in that state in 2011[14] and therefore does not exist under Maryland law. Md. Code Ann. Corps. & Ass'ns § 3-503(d); *see also* Maryland Dep't of Assessments and Taxation, *Business Property Assessment Form* at 2. https://www.dat.maryland.gov/business/Documents/entitystatus.pdf. In any future proceedings, the Petitioner must establish its legal standing to transact business in Maryland.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary had at least two years of experience in rug and carpet repair as of the petition's priority date. The Beneficiary therefore does not meet the labor certification's minimum experience requirement. The record also establishes that the Beneficiary willfully misrepresented a material fact regarding her employment history in the labor certification.

We will dismiss the appeal for all of the reasons stated above. However, we withdraw the Director's finding that the Petitioner misrepresented a material fact regarding its relationship with the Beneficiary in the labor certification.

ORDER: The appeal is dismissed.

[14] Maryland Dep't of Assessments & Tax'n, Maryland Business Express Business Entity Search, https://www.egov.maryland.gov/BusinessExpress/EntitySearch/Search (search for "United Carpet and Rug Inc.") (last visited Feb. 09, 2023).