



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

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

In Re: 20338383

Date: AUG. 17, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for a Skilled Worker

The Petitioner, a “restaurant and hookah lounge,” seeks to employ the Beneficiary as a restaurant manager. It requests skilled worker classification for the Beneficiary under the third preference immigrant category. 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” immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition concluding that the Petitioner provided falsified evidence and therefore did not establish that the Beneficiary had at least two years of qualifying experience to meet the minimum requirement of the labor certification and demonstrate eligibility for classification as a skilled worker. The matter is now before us on appeal.

In visa petition proceedings it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Director did not provide an adequate analysis to explain the basis for the denial and therefore precluded a meaningful opportunity for the Petitioner to challenge the adverse decision. Notwithstanding our determination regarding the Director’s decision, the Petitioner did not provide sufficient reliable evidence showing that the Beneficiary gained the requisite experience to qualify for the skilled worker classification and for the proffered position under the terms of the labor certification. Accordingly, the Director’s decision will be withdrawn, and the matter will be remanded for further consideration and entry of a new decision that should provide greater analysis to allow the Petitioner an opportunity to fully respond.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the

Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

Further, to be eligible for classification as a skilled worker a beneficiary must have at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification underlying the petition. *Id.* All requirements must be met by the petition's priority date.¹ *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

II. BASIS FOR REMAND

First, we will discuss the Director's findings that resulted in the adverse decision. The Director focused primarily on the validity of evidence that the Petitioner submitted in response to a previously issued notice of intent to deny (NOID), where it was determined that the submitted evidence was "falsified" based on "other evidence and documentation on the record." The Director did not specifically identify the "other evidence" that led to this determination. Rather, the Director referenced two pieces of evidence: 1) an employment letter written by [redacted] the Beneficiary's father, in his capacity as senior personnel officer at [redacted] and 2) an employment letter written by [redacted] regarding the Beneficiary's claimed employment at the [redacted]

Regarding the former, the Director noted that "information available on the record" showed the Beneficiary's father to have been retired when the letter "was issued."² However, the Director did not explain how [redacted] "retired" status is relevant to his ability to attest to information that he likely had access to during his period of employment for [redacted] where the Beneficiary is also claimed to have been employed. Moreover, the Director established no nexus between [redacted] employment status with [redacted] and the finding that his employment verification letter was "fraudulent and fabricated."

Regarding the employment letter from [redacted] the Director noted that [redacted] reference to the Beneficiary as "shift manager" is inconsistent with a previously submitted undated letter, where [redacted] stated that the Beneficiary was employed as "chef manager and hookah manager." Although this inconsistency may reasonably cast doubt on the validity of [redacted] claims within the letters and may also cast doubt on the reliability of other evidence in the record, we do not agree that the inconsistency alone is sufficient to conclude that either or both of [redacted] letters were "falsified." It is unclear whether the Director alleged that the letters are themselves fake, or whether the information contained within the letters is inaccurate and false, and, therefore, the information in the letters is falsified.

¹ The priority date of an employment-based immigrant petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

² *See Matter of D-R-*, 25 I&N Dec. at 461 (stating that biased information in a document affects its evidentiary weight).

In sum, although the Director concluded that the Petitioner did not establish that the Beneficiary met the minimum requirements of the labor certification, this conclusion appears to have been based on the sole determination that the Petitioner offered falsified evidence to support its claims without fully and clearly elaborating on how the documentation was falsified. Because the Director denied the petition based upon a finding that he did not adequately substantiate, we will withdraw the Director's decision.

III. EVIDENTIARY DEFICIENCIES

Notwithstanding our withdrawal of the Director's decision, the record indicates that the Petitioner did not establish that the Beneficiary met the minimum requirements as of the petition's priority date, which in this case is June 20, 2019.

A. Requirements of the Labor Certification

The requirements for the proffered position of restaurant manager are indicated in section H of the labor certification (Job Opportunity Information). The pertinent requirements read as follows:

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|------|---|-------------|
| 4. | Education: Minimum level required: | High School |
| 5. | Is training required for the job? | No |
| 6. | Is experience in the job offered required? | Yes |
| 6-A. | How long? | 24 months |
| 7. | Is an alternate field of study acceptable? | No |
| 8. | Is an alternate combination of education and experience acceptable? | No |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | No |

The Petitioner also provided the following list of job duties in section H.11 of the labor certification:

Assign duties and responsibilities to employees in accordance with the work requirements, including the preparation of food, service, and distribution of hookah to customers. Train workers in the food preparation, drink preparation, and handling of hookah. Supervise and perform food preparation, hookah preparation, and drink preparation. Supervise and perform kitchen and dining room area cleaning activities with staff. Observe and evaluate kitchen staff, wait staff, and bartenders to ensure that proper procedures for handling of food, drink and hookah are satisfied. Inspect supplies, equipment, and work areas to ensure efficient service and compliance with health, safety, and work standards. Interact with customers, and review complaints to ensure that issues with food, drink, and hookah quality are dealt with efficiently. Perform additional managerial functions, such as hiring and firing staff, providing employee training, creating work schedules, and organizing employee time sheets. Perform financial functions, such as cash handling and deposits, payroll. In observing the function and efficiency of the restaurant, discuss and recommend ways to improve work procedures, work performance, and new menu items to the owner of the company.

In addition, section H.14 required the following specific skills: knowledge of Microsoft Word, Microsoft Excel, Microsoft Outlook, and knowledge of Quickbooks.

Thus, to meet the requirements of the labor certification, the Beneficiary must have (1) a high school level education, and (2) two years of experience as a restaurant manager, and the special skills listed in H.14.

B. Beneficiary's Qualifications

Section K of the labor certification (Alien Work Experience) claims that the Beneficiary held two full-time supervisory positions in [redacted] Pakistan. Both claimed positions were associated with food services and would total, if accurate and adequately documented, approximately eight years of experience at the time the labor certification was filed in June 2019. The specific employers, positions, and dates of employment were listed as follows:

- [redacted] working full-time in the position of "food service supervisor" starting on October 4, 2008, and continuing until September 1, 2013.
- [redacted] working full-time in the position of "shift manager" starting on July 1, 2006, and ending on September 1, 2009.

Regarding the Beneficiary's employment with [redacted] the Petitioner provided a letter of employment authored by the Beneficiary's father in his capacity as [redacted] senior personnel officer. The letter states that the Beneficiary worked at [redacted] as catering supervisor since 2009 and that during his period of employment his duties were to "make arrangements and manage Pakistani Food After that this food delivers z [sic] in the [redacted]. . . ." The letter also attested to the Beneficiary's "good moral character" and made claims about the Beneficiary having "best knowledge in his field."

The record also contains two undated letters of employment regarding the Beneficiary's claimed position with the [redacted]. Both letters were signed by [redacted] CEO of the establishment. In the first letter, submitted on [redacted] letterhead, [redacted] referred to the Beneficiary as "one of the top ten hookah [sic] lounge managers in Pakistan," claiming that the Beneficiary supervised "all our lounges" and worked as "chef manager and hookah manager" from July 2006 to September 2009 and earned Rs 50,000 "in salary and commission" on average, per month. The Beneficiary was described as having "good managerial skills in making hookah and whole restaurant desi dishes." In a separate document titled "Affidavit of Achievement," [redacted] stated that the Beneficiary participated in a hookah preparation competition where he won "first position" and was awarded a cash prize resulting in a job offer to work for [redacted] as hookah manager. [redacted] claimed that the Beneficiary was subsequently promoted as "Incharge [sic] in [redacted] [redacted] and received a raise to earning Rs 250,000 per month.

After reviewing the evidence of the Beneficiary's work experience, the Director issued the above-referenced NOID, where he first made the determination that the Petitioner offered falsified documents in support of its claim regarding the Beneficiary's prior work experience. Although the Director did not adequately substantiate this determination in his final decision, the NOID correctly pointed to a

considerable inconsistency between information contained in the Beneficiary's 2009 nonimmigrant visa (NIV) application and information provided in the labor certification regarding the Beneficiary's claimed periods of employment at [redacted] and the [redacted]. Further review of the referenced NIV application shows that when asked to list his current employer and provide information about his last two employers, the Beneficiary merely stated that he was a student and did not indicate having ever been employed either at [redacted] or at the [redacted]. This information directly conflicts with the Beneficiary's employment history as provided in Section K of the labor certification and would conflict with any submitted letters from [redacted] or [redacted]. The Petitioner must resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As correctly noted by the Director, 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 Petitioner attempted to address the NIV inconsistency in the NOID response, claiming that the Beneficiary had a "lapse in judgement" when filling out the NIV application and that he "simply wanted to complete his application as soon as possible to get an appointment with the U.S. Embassy for the interview." We find that this explanation does not constitute "independent, objective evidence" and therefore it is not sufficient to resolve the noted inconsistency.

The Petitioner also provided an additional affidavit from [redacted] and from two other individuals claiming to have been the Beneficiary's coworkers during his employment at the [redacted]. However, as noted earlier, [redacted] more recent affidavit is inconsistent with his earlier employment letter, which was provided initially in support of the petition. Namely, the initial letter states that the Beneficiary supervised "all our lounges" and worked as "chef manager and hookah manager," but the affidavit offered in response to the NOID indicates that the Beneficiary had a more limited role as "shift manager" and does not include a description of the Beneficiary's job duties. The more recent letter also claims that the Beneficiary "performed bookkeeping functions with the use of QuickBooks," a claim that was not included in the original employment letter; and neither letter states that the Beneficiary used Microsoft Word, Microsoft Excel, or Microsoft Outlook in the course of his employment. This deficiency is relevant given that use of the listed software was listed as required in H.14 of the labor certification. Likewise, [redacted] employment letters lack several of the job requirements that the Petitioner listed in H.11 of the labor certification, such as training workers in and supervising food preparation, inspecting supplies, reviewing and addressing customer complaints, handling deposits and payroll, hiring and firing staff, and making recommendations on how to improve the business. As such, it is not clear that the Beneficiary acquired the work experience necessary to meet the requirements of the proposed position. Lastly, although [redacted] original letter referenced the Beneficiary's "good managerial skills in making hookah and whole restaurant desi dishes," he did not clarify whether the "chef manager and hookah manager" was a single position or whether these were two separate positions and if so, whether they were full- or part-time and what duties each position entailed.

The affidavits from the Beneficiary's claimed co-workers are also insufficient given that neither individual claims to have worked at the [redacted] during the full period of the Beneficiary's claimed employment. Namely, the individual claiming to have worked as the cashier stated that his employment at the [redacted] lasted from 2007 to 2012, and the individual

claiming to have been a waiter at the same establishment stated that his employment was from 2006 to 2008, while the Beneficiary is claimed to have worked there from July 2006 to September 2009.

Furthermore, given that Section K of the labor certification states that the Beneficiary was employed by [] as food service supervisor from October 2008 to September 2013, it directly conflicts with the employment verification letter from [] current senior human resources officer, who stated that the Beneficiary “joined” [] on July 6, 2010, as a cargo assistant; the letter makes no mention of the Beneficiary having held any other position with [] nor does it list the Beneficiary’s job duties to establish that his claimed employment with [] would qualify him for the proffered position of restaurant manager.

The Petitioner also provided photocopies of [] temporary entry permits containing the Beneficiary’s image; the permits indicate that the Beneficiary was employed as a catering supervisor at [] in November 2008 and January 2009. However, not only are the photocopies of poor quality and partially illegible, but they are also inconsistent with the employment verification letter from [] current senior human resources officer and with information the Applicant provided on his 2009 NIV application. Although the Petitioner provided a photocopied email from October 2008 stating that the Beneficiary was interviewed for the position of catering supervisor on October 14, 2008, the labor certification states that the Beneficiary commenced his position as catering supervisor on October 4, 2008. Moreover, if the Beneficiary was initially hired to fill the position of catering supervisor in 2008, it is unclear why this information was not mentioned by [] current senior human resources officer. We further note that the labor certification indicates that from October 2008 to September 2009 the Beneficiary simultaneously held two full-time positions with two different employers, thus creating yet another anomaly that gives rise to doubt the validity of the Petitioner’s claims regarding the Beneficiary’s employment history abroad. *See Ho*, 19 I&N Dec. at 591-92.

Based on the anomalies and inconsistencies described above, as well as the conflicting information in the Beneficiary’s NIV application, further independent evidence is required, such as the Beneficiary’s foreign tax or payroll records to corroborate his claimed employment during the period in question. It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

III. CONCLUSION

Due to the multiple unresolved inconsistencies in the record, the Petitioner has not established with independent, objective evidence that the Beneficiary possesses the required 24 months of experience in the offered position, as required by the labor certification. However, given the previously described deficiencies in the denial, we hereby withdraw the Director’s decision and remand the matter for further consideration of the evidence and a new determination of the Petitioner’s eligibility. If the Director determines that a finding of fraud or willful misrepresentation is warranted, the Director shall issue a new notice that gives the Petitioner an opportunity to address any derogatory information and a new decision that (1) clearly identifies the finding and the party or parties against whom that finding is made, and (2) includes a detailed analysis highlighting the factors that may support that finding.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.