



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

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

In Re: 19731910

Date: JUL. 20, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

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

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that it was the successor-in-interest to the entity that filed the labor certification.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

#### I. EMPLOYMENT-BASED IMMIGRATION

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

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

Finally, if USCIS approves a petition, a designated noncitizen 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.

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<sup>1</sup> The priority date of a petition is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

## II. ANALYSIS

### A. Procedural History

The underlying labor certification was filed on March 29, 2019, by [redacted] (the “labor certification employer”). Thereafter, a different legal entity, [redacted] (the “Petitioner”), filed an immigrant petition with the labor certification.<sup>2</sup> In support of the petition, the Petitioner submitted a “Corporate Affidavit” for [redacted]<sup>3</sup> dated March 26, 2019. The affidavit includes a list of “valid H-1B employees,” including the Beneficiary, and states that they have been transferred from the labor certification employer to [redacted]. The affidavit further states:

[redacted] assumes all obligations, liabilities and undertakings arising from or under attestations made in each individual certified and still effective LCA filed by [redacted]. Assumption of obligations and liabilities include, but not limited to, duties, wages, location of employment, and working conditions of the employee.

In a later request for evidence (RFE), the Director noted the discrepancy between the labor certification employer and the Petitioner and requested that the Petitioner explain it, and if applicable, submit evidence to demonstrate if a successor-in-interest transaction had occurred, including legal documentation of the exact date of the transaction and whether the current entity operates the same type of business. In response, the Petitioner submitted the same corporate affidavit explained above and several press releases dated in February 2019 explaining how [redacted] had sold its [redacted] coursework business” to [redacted]. The Director later denied the petition, concluding the Petitioner did not submit sufficient evidence to establish that it was a successor-in-interest to the labor certification employer, noting that the submitted affidavit from [redacted] [redacted] did not equate to a transfer of ownership.

On appeal, the Petitioner submits additional evidence and contends that this demonstrates that it was a successor-in-interest to the labor certification employer. Specifically, the Petitioner provides certain portions of a purchase agreement dated in February 2019 executed between [redacted] (listed as “Parent”), [redacted] (listed as “Seller”), and [redacted]<sup>4</sup> (listed as “Purchaser”). The Petitioner points to a section of this agreement, which states:

WHEREAS, [redacted] a Delaware limited liability company (the “Company”), a wholly owned direct subsidiary of the Seller, which is in turn wholly

<sup>2</sup> The Petitioner and the labor certification employer have different federal employer identification numbers.

<sup>3</sup> [redacted] is not the Petitioner. Instead, it appears to be a separate limited liability organized in Delaware in [redacted] 2018. See Del. Dep’t of State, Div. of Corps., <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last visited July 19, 2022). The Petitioner was organized in Delaware in [redacted] 2018. *Id.*

<sup>4</sup> The Petitioner states that [redacted] acted through its subsidiary, [redacted]. However, the purchaser listed on the purchase agreement is [redacted], not [redacted]. It is not clear if these companies are affiliated. The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

owned by Parent and its indirect Subsidiary, [REDACTED] directly and through its Affiliates, is engaged in the Business...

WHEREAS, the Seller desires to sell to the Purchaser, and the Purchaser desires to purchase from the Seller, all of the Company Interests, upon the terms and subject to the conditions set forth in this Agreement.

The Petitioner contends that the Petitioner was a party to this purchase agreement and that it establishes that it was a successor-in-interest to the labor certification employer. The Petitioner further submits on appeal another section of the purchase agreement, which states in relevant part:

6.13 Employment Matters.

- (a) On or prior to the Closing Date, Parent shall use reasonable best efforts to (i) transfer the employment of all the Closing Date Employees...to the Company ...and (iii) cause the Company to employ the Closing Date Business Employees under the terms and conditions of employment that are the same in all material respects as those in effect immediately before such transfer of employees, in each case in compliance with applicable Law.

B. Successor-In-Interest

Where the petitioner is a different entity than the labor certification employer, the petitioner must establish that it is a successor-in-interest to that employer.<sup>5</sup> A valid successor-in-interest relationship exists if three conditions are satisfied. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986); 6 *USCIS Policy Manual* E.3, <https://www.uscis.gov/policymanual>. First, the successor must fully describe and document the transfer and assumption of the ownership of all, or a relevant part of, the predecessor by the successor.<sup>6</sup> Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must establish all elements of eligibility as of the priority date, including evidence of the predecessor's ability to pay the proffered wage from the priority date to the date of the ownership transfer, and the successor's ability to pay the proffered wage from the date of the transfer onward. *Id.* The Director did not dispute, nor do we, that the job opportunity in the labor certification and petition were identical, that the Beneficiary is qualified for the stated position, or that the ability to pay the proffered wage has been established.<sup>7</sup> Therefore, the only issue on appeal is whether the Petitioner sufficiently described and documented the transfer and assumption of the ownership from the labor certification employer.

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<sup>5</sup> A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c).

<sup>6</sup> The record must show that the successor not only acquired the predecessor's assets, but also that the successor acquired the essential rights and obligations of the predecessor necessary to carry on the business in the same manner as the predecessor. The successor must continue to operate the same type of business as the predecessor, and the way the business is controlled and carried on by the successor must remain substantially the same as it was before the ownership transfer. 6 *USCIS Policy Manual*, *supra*, at E.3(F)(3).

<sup>7</sup> Following the date this appeal was filed in February 2020, the Petitioner (now named [REDACTED]) filed another Form I-140, Immigrant Petition for Alien Workers, on behalf of the Beneficiary and that petition was approved on February 24, 2021. Notably, the Petitioner was listed on both the labor certification and the petition.

Upon review, the Petitioner has not fully described and documented the purported transfer of the ownership of the labor certification employer to the Petitioner. For successor-in-interest purposes, the transfer of ownership may occur at any time after the filing or approval of the original permanent labor certification with DOL. 6 USCIS Policy Manual, *supra*, at E.3(F)(3). In this matter, the purchase agreement submitted on appeal is dated February 2019, which is before the date the labor certification was filed on March 29, 2019. The Petitioner indicates that “all interests” in it were acquired by [redacted] in March 2019, but it does not specify the exact date of the closing of this transaction. Similarly, the asserted transfer of employees from the labor certification employer to the Petitioner, claimed to be effectuated by the corporate affidavit on March 26, 2019, also took place prior to the date the labor certification was filed. Therefore, the record does not establish that a transfer of ownership occurred after the filing of the labor certification with DOL.

In addition, the Petitioner provided only three pages of a purchase agreement appearing to reflect that the Petitioner (through affiliated companies [redacted] and [redacted]) was sold in the transaction, and that [redacted] was the purchaser. One page of the purchase agreement vaguely refers to the labor certification employer as an “indirect subsidiary” of [redacted] but the record does not fully document the labor certification employer’s relationship to the Petitioner. Regardless, the submitted documentation does not reflect that the Petitioner assumed the essential rights and obligations of the labor certification employer as required to establish it as a successor-in-interest. Further, the full nature of the transaction is unclear since the Petitioner did not submit the complete purchase agreement and other documentation to substantiate the terms of the deal. For instance, the purchase agreement states that the purchaser was acquiring “all of the Company Interests,” a definition not included in the three submitted pages of the purchase agreement.<sup>8</sup> Therefore, the Petitioner did not sufficiently describe and document the purported transfer and assumption of the ownership of the labor certification employer. *Id.*

We acknowledge that the submitted section 6.13 of the purchase agreement related to “Employment Matters” appears to indicate that the labor certification employer’s parent company would use reasonable efforts to transfer the “Closing Date Business Employees” from it to the Petitioner prior to closing and employ these individuals in the same manner. However, the definition of “Closing Date Business Employees” is not provided in the record, and this section does not establish that, after the priority date, the Petitioner acquired the essential rights and obligations of the labor certification employer necessary to carry on the business.

Further, we agree with the Director’s determination that the provided corporate affidavit does not demonstrate that the Petitioner is a successor-in-interest to the labor certification employer. Again, as we have noted, the claimed transfer took place prior to the priority date, and the affidavit indicates that an employer other than the Petitioner assumed all obligations, liabilities and undertakings arising from each “LCA” filed by the labor certification employer. In addition, as noted by the Director, the submitted corporate affidavit does not reflect a change in ownership whereby the Petitioner acquired the essential rights and obligations necessary to carry on the business of the labor certification employer. The mere assumption of immigration obligations, or the transfer of immigration benefits derived from approved or pending immigration petitions or applications, will not give rise to a successor-in-interest

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<sup>8</sup> The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

relationship unless the transfer results from the *bona fide* acquisition of the essential rights and obligations of the predecessor necessary to carry on the business. *See* 19 Am. Jur. 2d *Corporations* § 2170; *see also* 20 C.F.R. § 656.12(a).

For the foregoing reasons, the Petitioner did not establish by a preponderance of the evidence that it is a successor-in-interest to the labor certification employer. As such, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.