



U.S. Citizenship
and Immigration
Services

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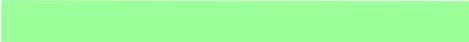


Date: **OCT 29 2014**

Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director) revoked the approval of the employment-based immigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The matter will be remanded to the director for the issuance of a new decision.

The petitioner is a retail business. It seeks to employ the beneficiary permanently in the United States as a bookkeeper pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(i).¹ As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). The priority date of the petition is July 9, 2001, which is the date the labor certification was accepted for processing by DOL. *See* 8 C.F.R. § 204.5(d).

The record reflects that the appeal is properly filed, timely and makes a specific allegation of error in law or fact.

We conduct appellate review on a *de novo* basis. *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). Our *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted on appeal.² An application or petition that fails to comply with the technical requirements of the law may be denied even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 D.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, at 145.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Attorney General (now Secretary of Homeland Security) may, at any time, for what he deems to be good and sufficient cause, revoke the approval of a petition approved by him under section 204 of the Act. In *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988), the Board of Immigration Appeals (BIA) held that the realization that a petition was approved in error may "in and of itself" be good and sufficient cause for revoking the approval of that petition, "provided the . . . revised opinion is supported by the record." *Id.* In his August 17, 2009 revocation of the visa petition's approval, the director indicated that a review of the record had found the approval of the visa petition to have been in error. Accordingly, the issue before us in this matter is whether the instant visa petition was initially approved in error and, therefore, subject to revocation.

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. §1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

Procedural History

On July 13, 2005, the Director, Vermont Service Center approved the instant Form I-140, Immigrant Petition for Alien Worker. On February 18, 2009, the director issued a Notice of Intent to Revoke (NOIR), informing the petitioner of the receipt of information that cast doubt on the reliability of the documentation it had submitted in support of the visa petition, and its compliance with DOL recruitment requirements. On March 23, 2009, the petitioner responded with evidence of its recruitment efforts. The director found the documentation submitted by the petitioner to offer further proof of its failure to comply with DOL requirements and, on August 17, 2009, he revoked the approval of the petition.

The petitioner appealed the director's decision to this office. On June 21, 2012, we withdrew the director's revocation of the petition's approval and remanded the matter for further consideration and the entry of a new decision, instructing the director to certify the decision to us if it was adverse to the petitioner. The director issued a new NOIR to the petitioner on May 2, 2013, informing the petitioner that the record did not establish its compliance with DOL recruitment requirements, its ability to pay the beneficiary the proffered wage, or the beneficiary's qualifications for the offered position. On July 2, 2013, the director revoked the approval of the petition for the reasons set forth in the NOIR, noting that the petitioner had failed to respond to the NOIR within the required 30-day (33-days if mailed) time period.³

On July 18, 2013, the petitioner again appealed the revocation. On appeal, the petitioner asserts that it did comply with DOL recruitment requirements, has established its ability to pay the beneficiary the proffered wage and that the beneficiary is qualified for the offered position.

Sufficiency of Notice

The threshold issue on appeal is whether the director adequately advised the petitioner of the basis for his revocation of the approval of the petition, as required by the regulation at 8 C.F.R. § 205.2, which reads:

(a) *General.* Any [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this [USCIS].

The regulation at 8 C.F.R. § 103.2(b)(16) further requires:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut

³ The record reflects that the petitioner filed an untimely response to the NOIR on July 5, 2013, 64 days after its issuance, requesting additional time.

the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

Moreover, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987) provide that:

A notice of intention to revoke the approval of a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. However, where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa petition cannot be sustained.

Here, as noted above, the NOIR, issued by the director on May 2, 2013 informed the petitioner that the record did not adequately demonstrate that it had complied with DOL recruitment requirements, that it had the ability to pay the proffered wage as of the July 9, 2001 priority date or that the beneficiary had the experience required by the labor certification. The petitioner was given 30 days to provide evidence rebutting these findings.

Having reviewed the record, we find that the director's NOIR specifically advised the petitioner of issues that, if "unexplained and unrebutted," would warrant the denial of the instant petition. Accordingly, the NOIR was properly issued for good and sufficient cause, and the petitioner received adequate notice of the director's intent to revoke the approval of the petition.

In that the NOIR was properly issued, we will consider whether the director's revocation of the visa petition's approval is supported by the record of proceeding in this matter.

Petitioner's Compliance with DOL Requirements

The record reflects that the petitioner's owner, [REDACTED], signed the labor certification on February 7, 2001 and filed it with DOL on July 9, 2001. DOL approved the labor certification on August 12, 2002. The record contains copies of [REDACTED] advertisements submitted by the petitioner reflecting publication dates of March 25, April 1, April 8, and April 15, 2001. The record of proceeding also includes a February 14, 2001 letter to [REDACTED],⁴ the petitioner's former counsel, from the Classified Manager of the [REDACTED] confirming that all of the job advertisements ordered by Mr. [REDACTED] were also posted online on [REDACTED] for 30 days.

In his July 2, 2013 revocation of the petition's approval, the director found that the record did not establish that the petitioner had complied with DOL recruitment requirements. He noted that the labor certification in the record reflected that Mr. [REDACTED] had signed the labor certification on

⁴ In this proceeding, the petitioner's current counsel will be referred to as counsel while its prior counsel, Mr. [REDACTED], will be referred to by name.

February 7, 2001, attesting to the completion of the petitioner's recruitment for the offered position when it had not yet advertised for the position. The director also observed that the petitioner had failed to respond to a May 2, 2013 NOIR, which asked it to explain and document its role and that of Mr. [REDACTED] in the recruitment process for the offered position. The director further indicated that the petitioner had not responded to the May 2, 2013 NOIR's request for information on the specific steps it had taken in the recruitment process, had not provided copies of its in-house posting notices for the offered position, had not indicated the length of time its in-house notices had been posted; and had not submitted evidence establishing its active participation in the recruitment process and compliance with DOL requirements.

While Mr. [REDACTED] signing of the labor certification prior to the petitioner's placement of the submitted print advertisements raises questions about the extent to which the petitioner was actively involved in the recruitment process for the offered position, United States Citizenship and Immigration Services (USCIS) may not make an adverse finding against the petitioner based on its failure to provide evidence of its compliance with DOL requirements. At the time the petitioner filed the labor certification application, employers were not required to maintain any records documenting the labor certification process once DOL had approved the labor certification. *See* 45 Fed. Reg. 83933, Dec. 19, 1980 as amended at 49 Fed. Reg. 18295, Apr. 30, 1984; 56 Fed. Reg. 54927, Oct. 23, 1991. Not until 2005, when the DOL switched to the electronic filing and processing of labor certifications, were employers required to maintain records and other supporting documentation, and, even then, employers were required to keep their labor certification records for no more than five (5) years. *See* 69 Fed. Reg. 77386, Dec. 27, 2004 as amended at 71 Fed. Reg. 35523, June 21, 2006; *also see* 20 C.F.R. § 656.10(f) (2010). On appeal, the petitioner indicates that it has submitted the only evidence it has of the recruitment conducted for the offered position in 2001. Thus, the petitioner's failure to produce further evidence of recruitment will not be construed negatively.

The limited evidence found in the record suggests that the petitioner filed the labor certification with DOL under its reduction in recruitment procedures, one of two recruitment processes then allowed by DOL.⁵ The reduction in recruitment process allowed an employer to conduct all recruitment requirements, including placing an advertisement in a newspaper of general

⁵ In July 2001, petitioners could file labor certification applications under either the supervised recruitment process or the reduction in recruitment process. *See* 20 C.F.R. § 656.21 (2004). Under the supervised recruitment process an employer was required to file a Form ETA 750 with the local State Employment Service Agency (SESA), which would then date stamp the labor certification and make sure that it was complete; calculate the prevailing wage for the job opportunity and put its finding into writing; prepare and process an Employment Service job order; and place the job order into the regular Employment Service recruitment system for a period of thirty (30) days. *See* 20 C.F.R. §§ 656.21(d)-(f) (2004). The employer filing the labor certification in conjunction with the recruitment efforts conducted by the local office would then place an advertisement for the job opportunity in a newspaper of general circulation or in a professional, trade, or ethnic publication and supply the local office with required documentation or requested information in a timely manner. *See* 20 C.F.R. §§ 656.21(g)-(h) (2004). However, under the reduction in recruitment process, the employer could conduct all of the recruitment requirements including placing an advertisement in a newspaper of general circulation and posting a job notice in the employer's place of business prior to filing the labor certification. To request a reduction in recruitment, a petitioner was required to file a written request, along with the labor certification application, at the appropriate local SESA. The petitioner was required to submit evidence of its efforts to recruit U.S. workers for the offered position during the preceding six months. *See* 20 C.F.R. §§ 656.21(i)-(k).

circulation, prior to filing the labor certification. Although the petitioner's owner signed the labor certification on February 7, 2001, prior to its published recruitment, the advertisements submitted by the petitioner are dated within the six-month period preceding its July 9, 2001 filing of the labor certification application, which is consistent with the requirements at 20 C.F.R. § 656.21(i) at that time. The labor certification application also supports the conclusion that the petitioner filed under the reduction in recruitment process as it states at Part A.21. that recruitment for the offered position was conducted through "newspaper advertisements, internal posting, and word of mouth."

The record of proceeding shows that the petitioner signed the labor certification forms prior to the dates its advertisements were publicized. However, the record includes the petitioner's advertisements, documenting that they ran on multiple dates prior to the time that the petitioner filed the labor certification with DOL. As the petitioner advertised the job opportunity in accordance with reduction in recruitment procedures, and as DOL accepted its compliance with those procedures by approving the labor certification, the petitioner appears to have substantially complied with DOL's recruitment procedures as they existed at that time. In visa petition proceedings, a petitioner meets its burden of proof if it establishes eligibility for the immigration benefit sought by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361.

While concerns about the petitioner's involvement in the labor certification process remain, the record does not contain sufficient evidence to establish that the petitioner failed to follow DOL recruitment requirements. Moreover, we find the director's NOIR questioned the petitioner's compliance with DOL recruitment requirements based solely on the date that Mr. [REDACTED] signed the labor certification. No external evidence in the record indicates that the petitioner engaged in fraud or the willful misrepresentation of a material fact in the recruitment process prior to filing the labor certification with DOL.

The BIA held in *Matter of Ho* that the realization that a petition was approved in error may "in and of itself" be good and sufficient cause for revoking the approval of that petition, "provided the . . . revised opinion is supported by the record." *Id.*, at 590. Here the record does not support the director's finding that the petitioner failed to comply with DOL recruitment requirements and the record offers no other basis for reaching this finding. Therefore, the director did not have good and sufficient cause to revoke the visa petition's approval on this basis.

Petitioner's Ability to Pay

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the

form of copies of annual reports, federal tax returns, or audited financial statements In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

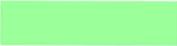
A petitioner must establish that its job offer to a beneficiary is a realistic one. Because the filing of a labor certification application establishes a priority date for any subsequently filed immigrant visa petition, a petitioner must establish that a job offer is realistic as of the priority date and that the offer remains realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. Where a petitioner has filed petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each sponsored worker. See *Matter of Great Wall*, at 144-145; see also 8 C.F.R. § 204.5(g)(2).

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner was employing the beneficiary as of the date on which the labor certification was accepted for processing by DOL and whether it continues to do so. If the petitioner documents that it has employed the beneficiary at a salary equal to or greater than the proffered wage, that evidence is considered *prima facie* proof of the petitioner's ability to pay pursuant to 8 C.F.R. § 204.5(g)(2). If the petitioner does not demonstrate that it employed and paid the beneficiary at an amount at least equal to the proffered wage during the required period, USCIS then examines the net income figure reflected on the petitioner's federal income tax returns, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. Filed Nov. 10, 2011).⁶ If the petitioner's net income during the required time period does not equal or exceed the proffered wage or if when added to any wages paid to the beneficiary, does not equal or exceed the proffered wage, USCIS reviews the petitioner's net current assets.

In cases where neither a petitioner's net income nor its net current assets establish its ability to pay the proffered wage during the required period, USCIS may also consider the overall magnitude of its business activities. *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). In assessing the totality of the petitioner's circumstances, USCIS may look at such factors as the number of years it has been in business, its record of growth, the number of individuals it employs, abnormal business expenditures or losses, its reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence it deems relevant.

In the present case, the labor certification establishes that the proffered wage is \$11.50 an hour or

⁶ Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).



\$20,930.00 a year (based on a 35-hour work week)⁷ from the July 9, 2001 priority date onward. At the time of the petition's approval on July 15, 2005, the most recent tax return available was that for 2004.

In his decision, the director indicated that the record contained only a 2004 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the beneficiary, which reflected earnings of \$11,000 and the petitioner's 2001 tax return, which reported net current assets that were sufficient to pay the proffered wage in that year. Accordingly, the director found that the petitioner had failed to establish its ability to pay the proffered wage, noting that the May 2, 2013 NOIR had requested the beneficiary's Forms W-2, Forms 1099-MISC, Miscellaneous Income, and/or payroll records, as well as the petitioner's tax returns, annual reports or audited financial reports from 2002 onward.

On appeal, the petitioner, a single-member Limited Liability Company (LLC), submits its Forms 1120S, U.S. Income Tax Returns for an S Corporation, for the years 2002 through 2012.⁸

The only documentation of the wages paid to the beneficiary by the petitioner is the beneficiary's 2004 Form W-2, which reports \$11,000 in earnings (\$9,930.00 less than the proffered wage.) Therefore, the record does not establish the petitioner's ability to pay the proffered wage in any year of the required period based on the wages paid to the beneficiary.

The petitioner's tax returns for 2001 through 2004, the tax returns covering the period from the July 9, 2001 priority date to the July 15, 2005 approval of the petition, reflect its net income and net current assets as follows:

<u>Tax Year</u>	<u>Net Income</u>	<u>Net Current Assets</u>
2001	\$3,632.00	\$45,984.00
2002	(\$7,535.00)	\$70,389.00
2003	(\$13,180.00)	\$96,438.00
2004	(\$14,479.00)	\$116,085.00

The net current assets reported in the petitioner's tax returns for the years 2001 through 2004 exceed the annual proffered wage of \$20,930.00 in all years, establishing that as of the date of the petition's approval, the petitioner had the ability to pay the beneficiary the proffered wage from the July 9, 2001 priority date to the time the petition was initially approved. Therefore, although the record lacked sufficient evidence to establish the petitioner's ability to pay at the time the director's revoked the approval of the visa petition, the petitioner has overcome this deficit on appeal. We also note that based on the additional tax records submitted by the

⁷ Our decision of June 21, 2012 incorrectly stated the proffered wage as \$23,920.00.

⁸ Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to the deficiency, USCIS need not accept the evidence if it is offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). However, in the present case, the petitioner's tax returns for 2002 through 2004 have been considered in determining ability to pay.

petitioner on appeal, the petitioner appears to be a small, but viable business and may be able to establish its ability to pay based on the totality of its circumstances also, pursuant to the analysis set forth in *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

Beneficiary's Qualifications

To establish that a beneficiary is qualified to perform the duties of the offered position, a petitioner must demonstrate that the beneficiary met all of the requirements set forth in the labor certification by the priority date of the visa petition, which in this case is June 13, 2002. 8 C.F.R. §§ 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the present case, the labor certification at Part A.14. requires the beneficiary to have two years of experience as a bookkeeper. The beneficiary states in Part B.15. of the labor certification that he was employed full-time as a bookkeeper by the [REDACTED] in India from January 1995 until December 1998, a claim supported by a February 20, 2001 statement signed by an individual identified as the owner of the [REDACTED]. The 2001 document states:

[The beneficiary] worked at our business taking care of our accounting an[d] books from January 1995 to December 1998. He was responsible for accounts payable, an[d] receivable balancing checking accounts, billings etc. we found him as a sincere, honest and hardworking person.

In his July 2, 2013 decision, the director found that the February 20, 2001 statement did not comply with the requirements of the regulation at 8 C.F.R. § 204.5(g)(1) as the signature of the owner was illegible and the owner's name was not included elsewhere in the statement.⁹ He indicated that the May 2, 2013 NOIR had asked the petitioner for a new letter from the owner of the [REDACTED] one which provided the exact dates of the beneficiary's employment and a specific description of the duties he performed. The director also noted that the NOIR had requested copies of paystubs, payroll records, tax documents or financial statements to establish the beneficiary's experience with the [REDACTED].

⁹ The requirements at 8 C.F.R. § 204.5(g)(1) are also reflected in the regulation at 8 C.F.R. § 204.5(l)(ii)(A), which states:

- (a) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the **name**, address, and title of the trainer or employer, and a description of the training received or the experience of the alien [emphasis added].

On appeal, the petitioner submits a second experience letter that appears to be signed on behalf of the owner of the [REDACTED] by an individual with power of attorney for the [REDACTED]. Again, however, the signature on the letter is illegible. Stamps on the statement indicate that it was signed before a notary on March 9, 2009. The letter reflects the same dates of employment as the February 20, 2001 statement and describes the beneficiary's bookkeeping duties in virtually identical language.

In light of the questions raised by these experience letters, we requested the assistance of USCIS, New Delhi in confirming their validity, as well as the employment claimed by beneficiary. In response, USCIS New Delhi conducted a July 22, 2014 site visit to the address indicated on [REDACTED] letterhead, during which they learned that the [REDACTED] had ceased operations in 2009. Nevertheless, the USCIS officer(s) interviewed [REDACTED] the former owner of [REDACTED] who indicated that he was the author of the 2009 experience statement and also identified the signature on the 2001 statement as that of his nephew, [REDACTED] who managed the [REDACTED] at that time. Mr. [REDACTED] also provided the interviewing officer(s) with another written statement confirming the beneficiary's employment with the [REDACTED]

Based on the information gained from Mr. [REDACTED] from other interviews conducted during the site visit and from the exemplars of genuine [REDACTED] letterhead that were provided, USCIS New Delhi concluded that "no fraud" was involved in the beneficiary's claim of employment experience with the [REDACTED]. Accordingly, we find the record to establish that the beneficiary had the experience required by the labor certification as of the July 9, 2001 priority date, thereby removing the beneficiary's qualifications as a basis for revoking the petition's approval.

Conclusion

Based on the additional evidence obtained during the appeal process, the record now demonstrates the beneficiary's qualifications for the offered position and the petitioner's ability to pay the proffered wage as of the priority date. Further, it does not support a finding that the petitioner failed to comply with DOL requirements during the labor certification process. Accordingly, we do not find that USCIS erred in approving the visa petition on July 15, 2005.

As the petition was not approved in error, it has not been revoked for good and sufficient cause pursuant to section 205 of the Act. Accordingly, we will withdraw the director's July 2, 2013 decision. The matter will be remanded to the director for the issuance of new decision.

ORDER: The director's July 2, 2013, decision is withdrawn. The matter is remanded to the director for the issuance of a new decision.