



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

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

MATTER OF A-T-, INC.

DATE: DEC. 8, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The employment-based immigrant visa petition was denied by the Director, Texas Service Center, initially on the ground of abandonment. The Petitioner filed a motion to reopen and reconsider. The Director granted the motion, but denied the petition on the merits. The case is now before us on appeal. The matter will be remanded to the Director for further consideration and the entry of a new decision.

The Petitioner filed the instant Form I-140, Immigrant Petition for Alien Worker, on January 6, 2007, seeking to employ the Beneficiary permanently in the United States as an account manager and to classify him as a skilled worker 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). Under this statutory provision preference classification may be given to qualified immigrants who are capable of performing skilled labor that requires at least two years of training or experience, is not of a temporary nature, and for which qualified workers are not available in the United States. In conformance with the statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, which was filed with the U.S. Department of Labor (DOL) on April 30, 2001, and certified by the DOL (labor certification) on August 14, 2006.

In his decision denying the petition on the merits, issued on June 25, 2013, the Director determined that (1) the evidence of record did not establish that the Beneficiary had the requisite two years of experience to meet the terms of the labor certification, and (2) the Petitioner did not establish its continuing ability to pay the proffered wage of \$54,360 per year from the priority date of the petition (April 30, 2001) up to the present.

With respect to experience, the Director discussed a number of inconsistencies in the immigration-related petitions, applications, and associated forms filed by the Petitioner and the Beneficiary regarding the Beneficiary's employment history. The Director found that the Beneficiary willfully misrepresented his prior employment history by listing a job on the Form ETA 750 that he did not perform, subsequently crossing it out, and on a "Rider to ETA 750, Part B" dated July 17, 2006, adding two jobs to the labor certification that overlapped the employment time frame covered by the original Form ETA 750. One of the jobs listed on the rider replaced the job crossed out on the original Form ETA 750. The Director expressed "doubts that the Department of Labor is aware of the changes . . . on the Form ETA-750B." Accordingly, he determined that "USCIS [U.S.

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Citizenship and Immigration Services] will not accept the Form ETA-750B as evidence of the beneficiary's employment history" and "will only consider the beneficiary's employment listed on the initial Form ETA-750A [sic]." Based on the two jobs listed on that initial document, the Director determined that the evidence of record did not establish that the Beneficiary had at least two years of experience as an account manager performing the duties of the proffered position.

Regarding ability to pay the proffered wage, the Director first reviewed the Forms W-2, Wage and Tax Statements, submitted as evidence of the Beneficiary's compensation from the Petitioner in the years 2003-2009. After noting that there were address discrepancies in the W-2 forms for 2003, 2004, and 2005 that were unresolved by the Petitioner, the Director decided that no Forms W-2 would be accepted as evidence of the Petitioner's ability to pay the proffered wage. Next the Director reviewed the Petitioner's federal income tax returns for the years 2001-2009, which showed that for all nine of those years the Petitioner's net income and net current assets were both well below the proffered wage of \$54,360 per year.<sup>1</sup> Nor did the Petitioner's other assets, including a bank account and business property, demonstrate its ability to pay the proffered wage. The Director also noted a discrepancy in the Petitioner's tax returns, which described its business activity as a "convenience store" rather than an "auto parts trading" business as described in the I-140 petition (and the labor certification). The Director concluded that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date up to the present.

The Petitioner filed a timely appeal, along with a brief from counsel and additional documentation. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

With regard to the Petitioner's business activity, [REDACTED] the Petitioner's president, asserts in a statement dated July 24, 2013, that his previous attorney made a drafting mistake on both the labor certification application and the I-140 petition in describing the petitioning entity as an auto parts trading business. That is the nature of his business in Saudi Arabia, [REDACTED] indicates, not in the United States. Business documents in the record refer to the Petitioner's business in [REDACTED] Georgia, as a convenience store/food mart with gas station.

Under section 203(b)(3)(A)(i) of the Act the Beneficiary must have at least two years of qualifying experience to be eligible for classification as a skilled worker. The Beneficiary must also meet all of the education, training, experience, and any other requirements set forth in the labor certification. See 8 C.F.R. § 204.5(l)(3)(ii)(B). Furthermore, the requirements of the labor certification must be met by the Beneficiary as of the petition's priority date, which is the date the labor certification application was filed with the DOL. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this case, the priority date is April 30, 2001.

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<sup>1</sup> On the Form ETA 750 as originally submitted to the DOL in April 2001 the proffered wage was entered as \$30,000 per year. However, the proffered wage was changed to \$54,360 by means of a handwritten entry dated February 14, 2006, next to which is an official stamp reading: "CORRECTIONS [the petitioner's address was also changed] APPROVED BY DOL REGIONAL OFFICE."

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The job duties of the account manager position at issue in this proceeding are described as follows in the Form ETA 750:

Preparing the financial and management reports; Keeping all accounting records both on a manual and computerized system; Organizing staff within the departments, cash and carry, house-keeping and maintenance; Handling of all cash and banking transactions; account receivable and account payable; preparing payroll and tax reports; Analyzing cash flow, preparing budgets and balance sheet and financial statements.

As specified on the Form ETA 750, the minimum requirements for the proffered position are two years of college education majoring in business or a related field and two years of experience in the job offered or in the related occupation of accounting. To be eligible for classification as a skilled worker under the terms of the labor certification the Beneficiary must have fulfilled these requirements by April 30, 2001.<sup>2</sup>

On the Form ETA 750, Part B, as initially filed with the DOL in 2001, two prior jobs were listed for the Beneficiary. They included the following:

- Branch Manager for [REDACTED] in [REDACTED] Saudi Arabia, from January 1980 to December 1998. The job duties were described as follows:

Managed and supervised reservation ticketing, counter services, travel consultant, staff training and policy holding.

- Account Manager for [REDACTED] in [REDACTED] Georgia, from February 2000 to the present (April 2001). The job duties were described as follows:

Preparing all financial and management reports; Keeping all accounting records both on a manual and computerized system; Organizing staff within the departments, cash and carry, house-keeping and maintenance; Handling of all cash and banking transactions; account receivable and account payable; preparing payroll and tax reports; Analyzing cash flow, preparing budgets and balance sheet and financial statements.

As previously discussed, there is a Rider to ETA 750, Part B, signed by the Beneficiary and dated July 17, 2006, which omitted the job with [REDACTED] and added two additional jobs to the Beneficiary's employment history prior to the commencement of his employment with the Petitioner in July 2002. The newly listed jobs were:

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<sup>2</sup> With respect to the educational requirement of the labor certification, the record shows that the beneficiary earned a two-year bachelor of commerce degree from [REDACTED] in Pakistan, awarded in 1978.

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- Accountant for [REDACTED] Georgia, from January 1999 to February 2000; and
- Self-employed Owner/Accountant of [REDACTED] (in [REDACTED] Georgia) from February 2000 to March 2002.

The job duties were described identically for both jobs, reading as follows:

Prepared all financial and management reports to comply with all accounting regulations; Kept all accounting records both on a manual and computerized system; Organized staff within the department and handled cash and banking transactions; A/R and A/P; prepared payrolls and tax reports.

In addition, the previously listed job with [REDACTED] (which overlapped with the newly listed self-employment) was crossed out on the original Form ETA 750, Part B. The Rider to ETA 750, Part B, was signed by the Beneficiary and dated July 17, 2006. Likewise, the cross-out on the original Form ETA 750, Part B, was signed by the Beneficiary and dated July 17, 2006. However, there is no DOL stamp or any other notation from DOL on the Rider to ETA 750, Part B, indicating that it approved these changes to the original Form ETA 750.

On appeal the Petitioner asserts that its previous attorney made a drafting mistake on the original Form ETA 750 by listing [REDACTED] as a prior employer rather than [REDACTED] for the time period of February 1, 2000 to March 1, 2002. In a statement dated July 24, 2013, the Beneficiary acknowledged that he “did not show up for work” with [REDACTED].

In his denial decision the Director expressed doubt about whether the DOL had reviewed the changes to the Beneficiary’s employment history on the Rider to ETA 750, Part B. No definitive finding was made on this issue, however, which is crucial to the Director’s determination that the Beneficiary willfully misrepresented material facts in the employment history he claimed on the labor certification application. Accordingly, the case will be remanded to the Director for further consideration and a new decision, which shall include a finding as to whether the DOL received the changes to the Beneficiary’s work experience, as inscribed in the Rider to ETA 750, Part B, dated July 17, 2006, before it stamped the Application for Alien Employment Certification as certified on August 14, 2006.

The Director shall also address the issue of the Petitioner’s ability to pay the proffered wage, in light of the current record, and any other issue(s) that may be deemed relevant.

The Director may request additional evidence from the Petitioner, if necessary, and shall accord the Petitioner an appropriate time period to respond.

<sup>3</sup> The record shows that [REDACTED] filed an H-1B petition on the Beneficiary’s behalf in October 1999, which was approved by the Texas Service Center in February 2000. In April 2001, however, the company sent a letter to the legacy Immigration and Naturalization Service (INS) requesting that its H-1B petition be withdrawn because the Beneficiary had not reported for the job.

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**ORDER:** The decision of the Director, Texas Service Center, dated June 25, 2013, is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-T-, Inc.*, ID# 14929 (AAO Dec. 8, 2015)