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

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

MATTER OF L-S-F-, LLC

DATE: SEPT. 28, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an operator of seafood restaurants, seeks to permanently employ the Beneficiary as a cook under the immigrant classification of skilled worker or professional.¹ See Immigration and Nationality Act (the Act) § 203(b)(3)(A), 8 U.S.C. § 1153(b)(3)(A). The Director, Texas Service Center, revoked the petition's approval, and we dismissed the appeal. However, we will now reopen the matter on our own motion, withdraw our appellate decision, and remand the matter to the Director for further consideration.

The petition was initially approved on January 3, 2002. However, on February 26, 2009, the Director concluded that the record at the time of the approval did not establish the Beneficiary's qualifying experience for the offered position. Accordingly, he revoked the petition's approval.

We affirmed the Director's decision. We also found that the record at the time of the petition's approval did not establish the Petitioner's continuing ability to pay the proffered wage. We therefore dismissed the appeal on June 22, 2012.

On our own motion, we may reopen a proceeding or reconsider a decision. 8 C.F.R. § 103.5(a)(5). We will reopen this matter *sua sponte* and remand it to the Director for the following reasons.

¹ The Form I-140, Immigrant Petition for Alien Worker, identifies the Petitioner as [REDACTED]. However, the Federal Employer Identification Number (FEIN) stated on the form corresponds to [REDACTED], a Delaware limited liability company. See Sec'y of the Commonwealth of Mass., Corps. Div., at http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?&SEARCH_TYPE=1 (accessed Sept. 22, 2015); see also Commonwealth of Mass., Dep't of Revenue, at <http://www.mass.gov/dor/businesses/current-tax-info/guide-to-employer-tax-obligations/obtaining-identification-numbers.html> (accessed Sept. 22, 2015) (stating that Massachusetts identifies businesses by FEINs for tax purposes). The Form I-140 states an address for the Petitioner, [REDACTED] MA [REDACTED] that does not appear to correspond to the FEIN provided. The address provided by the Petitioner on the accompanying Form ETA 750, Application for Alien Employment Certification (labor certification) - [REDACTED] MA [REDACTED] - differs from the address on the Form I-140. On remand, the Petitioner should provide documentation to establish that the entities listed on the Forms ETA 750 and I-140 match the FEIN provided, and to explain the inconsistency between the entity's addresses on the forms. Also, any financial documentation submitted in support of the Petitioner's ability to pay the proffered wage must pertain to the employer stated on Forms ETA 750 and I-140, unless a successor-in-interest relationship is established. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986) (explaining under what conditions an entity other than a labor certification employer may continue to offer the same job opportunity for immigration purposes).

I. NOTICE TO THE PETITIONER

U.S. Citizenship and Immigration Services (USCIS) may revoke a petition's approval "at any time" for "good and sufficient" cause. INA § 205, 8 U.S.C. § 1155. A director's realization of a petition's mistaken approval may constitute good and sufficient cause for revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). USCIS must generally notify a petitioner before revoking a petition's approval. 8 C.F.R. § 205.2(b).

In the instant case, the Director's Notice of Intent to Revoke (NOIR), dated August 29, 2008, questions the Beneficiary's claimed qualifying experience with a former employer in Brazil. Online records indicate that the purported former employer did not register as an active business in Brazil until after the Beneficiary's claimed start date of employment. See Internal Revenue Serv. of Brazil, at <http://www.receita.fazenda.gov.br> (accessed Sept. 22, 2015) (allowing a search of the Cadastro Nacional da Pessoa Juridica (CNPJ) database); see also *Magalhaes v. Napolitano*, 941 F. Supp. 2d 150, 151 (D. Mass. 2013) (finding that CNPJ is a catalog of officially registered businesses in Brazil that is maintained by the Brazilian government). Based on that discrepancy, the NOIR alleges that the Beneficiary lacks the qualifying experience that he claimed on the accompanying labor certification and that the purported former employer indicated in a letter in support of the petition.

As we found in our appellate decision, the Director issued the NOIR for good and just cause. The discrepancy between the Beneficiary's claimed start date of employment and the date of registration by his purported former employer cast doubt on the veracity of his claimed qualifying experience. The discrepancy also cast doubt on the validity of the experience letter, which stated employment that began prior to the employer's registration. See *Ho*, 19 I&N Dec. at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of a petition).

However, the Director's NOIR did not outline deficiencies in the Petitioner's evidence of its ability to pay the proffered wage. We will therefore remand the petition to allow the Petitioner an opportunity to address those deficiencies, as well as deficiencies in its evidence in support of the Beneficiary's qualifying experience. On remand, the Director should consider the issues identified below.

II. EVIDENCE OF THE BENEFICIARY'S QUALIFYING EXPERIENCE

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); see also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981); see also *K.R.K.*

(b)(6)

Matter of L-S-F-, LLC

Irvine, Inc. v. Landon, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

In the instant case, the petition's priority date is April 12, 2001, the date an office within the employment service system of the U.S. Department of Labor (DOL) accepted the accompanying labor certification application for processing. The labor certification states the minimum requirements of the offered position of cook as two years of experience in the job offered.

The Beneficiary attested on the labor certification to full-time employment as a cook by [REDACTED] in Brazil from April 1993 to March 1996. The Beneficiary did not indicate any other relevant employment experience on the labor certification.

A petitioner must support a beneficiary's claimed qualifying experience with a letter from an employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter must provide the name, address, and title of the employer, and describe the beneficiary's experience.

The instant record contains a "declaration," dated February 20, 2001, from an unidentified individual. The declaration bears a stamp with information about [REDACTED] and states the Beneficiary's employment by that business as a cook from April 1, 1993 to March 6, 1996.

As we found in our appellate decision, the declaration does not state the name and title of the claimed former employer who signed it. It also does not describe the Beneficiary's experience. Thus, the declaration does not establish the Beneficiary's qualifying experience pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(A). In addition, the declaration does not state whether the Beneficiary's employment was full-time in nature.

The declaration's failure to identify its signer casts doubt on its authenticity. *See Ho*, 19 I&N Dec. at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of a petition). However, the company's purported stamp on the declaration suggests the validity of the Beneficiary's claimed employment.

On remand, the Petitioner should address the deficiencies in the document and provide competent, objective evidence to establish the Beneficiary's claimed qualifying experience. The evidence must establish the Beneficiary's possession of at least two years of experience as a full-time cook by the petition's priority date.

In response to the NOIR, the Petitioner asserted the start of the Beneficiary's employment by his former employer about a month before its registration for business, during the employer's "start-up phase." The Petitioner asserted common engagements by new Brazilian businesses in "test periods," during which they operate to determine the viability of their enterprises. If the test periods indicate viable enterprises, the Petitioner asserted the businesses' registrations with appropriate Brazilian government entities. However, the record does not indicate the engagement of the Beneficiary's claimed former employer in a test phase. *See INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984) (stating that counsel's

(b)(6)

Matter of L-S-F-, LLC

unsupported assertions do not establish facts of record). The record therefore does not resolve the discrepancies in the evidence regarding the Beneficiary's claimed start date of qualifying experience.

The Petitioner also submitted a September 19, 2008, "declaration," purportedly by the Beneficiary's former employer. This declaration states the Beneficiary's start of employment by the business in March 1993, during the employer's "phase of constitution." The Petitioner also provided a September 22, 2008, statement by the Beneficiary, indicating his start date of employment with his former Brazilian employer 30 days before the employer's registration. In addition, the Petitioner submitted a "social contract," dated May 7, 1993, indicating the establishment of the limited liability company

The September 19, 2008 declaration does not state the declarant's title or identify the declarant as the Beneficiary's purported former employer pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(A). The declaration is also not printed on the purported employer's stationery. Unlike the February 20, 2001 declaration, it also does not bear the employer's stamp. The record lacks evidence of the declarant's employment or position with the employer. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citation omitted) (stating that uncorroborated statements are insufficient to meet the burden of proof in visa petition proceedings). The declaration also does not describe the Beneficiary's experience pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(A).

In addition, the declaration indicates the Beneficiary's start of employment by his purported former employer in March 1993. This start date conflicts with the Beneficiary's statement that he began employment "30 days" before the employer's registration in May 1993 and casts additional doubt on his claimed experience. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence). The declaration also conflicts with the April 1993 start date stated on the accompanying Form ETA 750B. *Id.* at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of the visa petition).

The "social contract" submitted by the Petitioner also does not refer to a "start-up phase" or "test period" in which the Beneficiary's purported former employer temporarily operated before forming or registering. However, the accompanying English language translation translates only some of the contract's nine pages. The translation does not state which portion(s) are translated, or why some portions remain untranslated. This partial translation, or excerpt, of the document does not constitute a "full" and complete translation pursuant to 8 C.F.R. § 103.2(b)(3). Without a full translation, the contract does not support the Petitioner's claims.

On appeal, the Petitioner submitted a printout of online information regarding "starting a business in Brazil." However, the online printout does not support the Petitioner's assertions. While indicating that new businesses must register with various Brazilian government entities, the printout does not refer to any "start-up phases" or "test periods" in which businesses commonly operate before registering. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence). For the foregoing reasons, the record does not establish the Beneficiary's claimed qualifying experience.

(b)(6)

Matter of L-S-F-, LLC

On remand, the Petitioner should submit, and the Director may require, independent, objective evidence, such as government or business records, to establish the Beneficiary's qualifying, full-time experience in the offered position. Because the Beneficiary claimed to work 35 hours per week for his former employer, and because the purported former employer may not have been operating or serving customers until at least May 1993, the Petitioner must establish the Beneficiary's full-time employment as a cook for the period of claimed employment to establish his possession of the required two years of full-time experience. *See Z-Noorani, Inc. v. Richardson*, 950 F. Supp. 2d 1330, 1340-41 (N.D. Ga. 2013) (upholding USCIS's finding that a cursory list of a beneficiary's duties failed to clarify the claimed, full-time nature of his job).

III. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.* If a petitioner employs more than 100 workers, USCIS may accept a statement from a financial officer of an organization which establishes its ability to pay the proffered wage. *Id.*

In the instant case, the accompanying labor certification states the proffered wage of the offered position of cook as \$12.57 per hour, or \$22,877.40 per year for a 35-hour work week. As previously indicated, the petition's priority date is April 12, 2001.

In support of its ability to pay, the Petitioner submitted an October 17, 2000 letter from [REDACTED] its purported vice president of human resources and corporate administration.² The letter states the Petitioner's establishment in [REDACTED] its employment of 2,050 workers, its generation of gross sales of \$126 million, its total payroll expenses of \$30 million, and its ability to pay the Beneficiary's proffered wage.

The Petitioner's letter does not comply with 8 C.F.R. § 204.5(g)(2). As indicated in our appellate decision, the letter identifies its signer as vice president of human resources, not as a financial officer of the company. Additionally, the Form I-140 identifies the signer as a manager. Thus, his true position and title are unclear.

Moreover, the financial information in the letter appears to refer to a group of companies, rather than to the petitioning entity identified by the federal employer identification number (FEIN) stated on the

² In the letter and on its stationery, [REDACTED]; first name is spelled [REDACTED]. On the Forms I-140 and ETA 750A, his name is spelled [REDACTED]. The record does not explain the discrepancy in the spelling of his first name, which casts doubts on the authenticity and reliability of the Petitioner's letter. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence). A comparison of other immigration filings by the Petitioner indicates similar inconsistencies in the spelling of [REDACTED] name and the identification of his company title, as well as significant differences in his signatures, which cast doubt on the validity of the documentation submitted. The Petitioner should be allowed to review and address the varying signatures on remand and to confirm the validity of the documents submitted.

(b)(6)

Matter of L-S-F-, LLC

Form I-140. The record does not establish that all, or even several, of the Petitioner's restaurants operate under the same FEIN, rather than individually with separate tax identification numbers. The [REDACTED] website indicates the operation of 36 restaurants under that name in seven states and the District of Columbia. *See* [REDACTED] (accessed Sept. 22, 2015). Online corporate records for Massachusetts alone indicate 12 companies that appear to be affiliated with the [REDACTED]. Sec'y of the Commonwealth of Mass., Corps. Div, at <http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearchResults.aspx> (accessed Sept. 22, 2015). The record does not establish that the petitioning entity stated on the Form I-140, with [REDACTED] employs more than 100 workers. Therefore, the October 17, 2000 letter does not establish the Petitioner's ability to pay the proffered wage.

Pursuant to 8 C.F.R. § 204.5(g)(2), the Petitioner must submit copies of its individual annual reports, federal tax returns, or audited financial statements for the relevant years beginning with the year of the petition's priority date. The record does not establish the entity identified on the Form I-140 as part of a consolidated group of companies. As indicated in our appellate decision, the Petitioner appears to be a franchisee, responsible for submitting its own income tax returns. On remand, the Petitioner must clarify this issue.

In addition, as stated in our appellate decision, USCIS records indicate the Petitioner's filing of at least 39 other I-140 petitions since 1999. Because a petitioner must demonstrate its ability to pay the proffered wage of each filed petition, the instant Petitioner must establish its continuing ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other petitions that have remained pending after the instant petition's priority date. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where the petitioner did not demonstrate its ability to pay the proffered wages of multiple beneficiaries). The Petitioner must demonstrate its ability to pay the proffered wages of the other beneficiaries from the instant petition's priority date until the other beneficiaries obtained lawful permanent residence, or until their petitions were denied, withdrawn, or revoked, assuming that all of those beneficiaries were sponsored by the petitioning entity in this matter with [REDACTED]

For the foregoing reasons, the record does not establish the Petitioner's ability to pay the proffered wage. On remand, the Director should require the Petitioner to submit financial evidence required by 8 C.F.R. § 204.5(g)(2), including copies of its annual reports, federal tax returns, or audited financial statements, plus evidence of its ability to pay the wages of its multiple beneficiaries.

IV. CONCLUSION

We reopen this matter on our own motion and will withdraw our appellate decision. However, the petition is not currently approvable. We will therefore remand the matter for the Director's consideration of the issues discussed above.

On remand, the Director should notify the Petitioner of deficiencies of record consistent with this decision, along with any other relevant issues he may identify. The Director should also permit the Petitioner a reasonable amount of time in which to respond. *See* 8 C.F.R. § 103.2(b)(16)(i).

Matter of L-S-F-, LLC

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

Cite as *Matter of L-S-F-, LLC*, ID# 15760 (AAO Sept. 28, 2015)