



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

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

In Re: 8446917

Date: JULY 7, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a Greek cook. It requests classification of the Beneficiary as a skilled worker 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 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 petition was initially approved. The Director of the Nebraska Service Center subsequently revoked the approval of the petition, finding that the Petitioner had not adequately explained evidentiary inconsistencies concerning the Beneficiary's employment history and had not established that the Beneficiary met the minimum experience requirement of the labor certification. We dismissed a subsequent appeal on the same basis and additionally found that the Beneficiary is not eligible for classification as a skilled worker. The matter is now before us on a motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

I. MOTION REQUIREMENTS

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

The primary issue to be addressed in this decision is whether the Petitioner has submitted new facts that overcome our prior decision. A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). The labor certification requires two years of experience in the job offered to qualify for the proffered position of Greek cook. The labor certification listed one prior job for the Beneficiary, stating that he was

employed full-time (40 hours per week) as a cook by the [] in [] Greece, from May 10, 2008, to December 10, 2012.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3). The Petitioner submitted a letter from the general manager of [] stating that the Beneficiary was employed full-time there as a Greek cook from May 10, 2008, to December 10, 2012, and describing his duties.

The Director's notice of revocation and our subsequent decision dismissing the appeal focused on unresolved inconsistencies regarding the Beneficiary's experience. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). We noted the contradiction between the Beneficiary's claim to have worked as a cook at the [] from 2008 to 2012 and the omission of any reference to that employment in his prior nonimmigrant visa application and interview. We stated that it is incumbent upon the Petitioner to submit independent, objective evidence of the Beneficiary's employment with [] *Id.* We concluded that the evidence submitted by the Petitioner has not established that the Beneficiary gained any experience as a Greek cook with the [] and that the record does not establish that the Beneficiary has two years of qualifying experience as required by the labor certification. We also determined that the Beneficiary is not eligible for classification as a skilled worker.¹

On motion, the Petitioner submits the Beneficiary's Notification of Employment and Employer's Certificates, together with English translations, regarding the Beneficiary's employment with [] in Greece. Contrary to the labor certification, the Notification of Employment indicates that the Beneficiary was hired in the occupation of "cleaner" at [] in Greece on May 10, 2008, and that he worked part-time in that position. It does not state that he worked full-time as a cook or indicate how long he was employed there.

Further, the Employer's Certificates show that the Beneficiary was employed for approximately 2.5 months per year at [] between 2008 and 2012. It appears that his position was seasonal. Specifically, the certificates show that he was employed as follows:

May 10, 2008 – July 2008 (68 days total)
June 10, 2009 - August 2009 (68 days total)
May 10, 2010 – July 2010 (68 days total)
May 10, 2011 – July 2011 (68 days total)
May 10, 2012 – July 2012 (68 days total)

The certificates do not indicate his position at the hotel. Thus, the evidence presented on motion does not indicate that the Beneficiary worked full-time as a cook at [] in [] Greece, from May 10, 2008, to December 10, 2012, as stated on the labor certification. Instead, the evidence submitted on motion shows that the Beneficiary worked part-time for a total of 340 days as a cleaner at the hotel. Therefore, the Petitioner has not submitted new facts on motion that overcome our prior

¹ The minimum requirements for skilled worker classification "are at least two years of training or experience." 8 C.F.R. § 204.5(l)(3)(ii)(B).

decision. *See* 8 C.F.R. § 103.5(a)(2). The record does not establish that the Beneficiary has two years of experience as a Greek cook as required by the labor certification. Further, the record does not establish that the Beneficiary is eligible for classification as a skilled worker, as it does not show that he has at least two years of experience. Thus, we will dismiss the motion to reopen.

III. ABILITY TO PAY

Although not addressed in prior decisions, the record does not contain regulatory-required evidence of the Petitioner's continuing ability to pay the proffered wage from the priority date on March 6, 2015.² The regulation at 8 C.F.R. § 204.5(g)(2) requires that "[e]vidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements."

With the petition, the Petitioner submitted regulatory-prescribed evidence of its ability to pay the proffered wage in 2014. However, the record does not contain regulatory-prescribed evidence of its ability to pay for 2015, the year of the priority date.³ In any future filings, the Petitioner must establish its continuing ability to pay the proffered wage from the priority date.

ORDER: The motion to reopen is dismissed.

² The priority date of a petition is the date the U.S. Department of Labor accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d). The annual proffered wage is \$26,749.

³ The Petitioner submitted an unaudited summary of its cash receipts and disbursements for the year ending 2015. However, where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, the financial statements must be audited. 8 C.F.R. § 204.5(g)(2). The 2015 unaudited summary is insufficient to demonstrate the Petitioner's ability to pay the proffered wage.