U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37783800

Date: APR. 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a dental accessories business, seeks to employ the Beneficiary as a dental equipment technician. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor an alien for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that it had the continuing ability to pay the proffered wage of the offered job. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign worker in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the alien 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.

II. ANALYSIS

A petitioner must demonstrate its continuing ability to pay an offered job's proffered wage, from a petition's priority date until a beneficiary obtains permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements.[1] *Id.*

When assessing ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage, beginning with the year of a petition's priority date. *See generally* 6 *USCIS Policy Manual* E.(4)(C)(1), www.uscis.gov/policy-manual. If a petitioner did not annually pay the full proffered wage or did not pay a beneficiary at all, USCIS considers whether the business generated annual net income or net current assets sufficient to pay any differences between the proffered wage and the wages paid to a beneficiary. *See generally* 6 *USCIS Policy Manual* E.(4)(C)(2). If net income and net current assets are insufficient, USCIS may consider other factors potentially affecting a petitioner's ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967); *see generally* 6 *USCIS Policy Manual* E.(4)(C)(3).[2]

The petition and ETA Form 9089 state the proffered wage of dental equipment technician as $36,733 per year. The petition's priority date is May 31, 2023, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The Petitioner has not submitted evidence that it employed the Beneficiary at any time. Thus, based solely on wages paid, the Petitioner has not demonstrated its ability to pay the proffered wage.

The Petitioner states that it is a limited liability corporation, established in 2012 with two employees. The Petitioner's tax returns indicate that it elects to be taxed as an S Corporation. If an S corporation, like the Petitioner, has income exclusively from a trade or business, USCIS considers its net income (or loss) to be the figure for "Ordinary business income (loss)" on page 1, line 21, of the Internal Revenue Service (IRS) Form 1120S. However, if there are relevant entries for additional income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K of the IRS Form 1120S, and the corporation's net income or loss will be found in line 18 of Schedule K ("Income/loss reconciliation"). Net current assets are the difference between a petitioner's current assets and current liabilities.

The Petitioner provided copies of its federal income tax returns, IRS Forms 1120S. The 2023 return reflects net income of -$19,670 and net current assets of -$47,590. Neither amount meets nor exceeds the annual proffered wage of $36,733. The tax return therefore does not establish the Petitioner's ability to pay in 2023.

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[1] Although inapplicable here, petitioners that employ at least 100 people may submit statements from financial officers to demonstrate the businesses' ability to pay proffered wages. *See* 8 C.F.R. § 204.5(g)(2).

[2] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, Inc. v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Four Holes Land & Cattle, LLC v. Rodriguez*, No. 5:15-cv-03858, 2016 WL 4708715, **4-5 (D.S.C. Sep. 9, 2016).

On appeal, the Petitioner submits its IRS Form 1120S for 2024. The Petitioner's 2024 federal income tax return reflects net income of -$3,005 and net current assets of -$60,044. The return therefore does not demonstrate the Petitioner's ability to pay the proffered in 2024.

Thus, based on a review of wages paid, net income, and net current assets, the Petitioner has not demonstrated its continuing ability to pay the proffered wage from the May 31, 2023 priority date.

On appeal, the Petitioner asserts that it has established its ability to pay the proffered wage based on the following:

- The adjusted gross income of the Petitioner's "sole proprietor."
- The Petitioner's total income and total assets.
- The totality of the circumstances, including the Petitioner's 13 years "with ongoing business operations in the dental equipment industry."

The Petitioner submits copies of its sole shareholder's personal income tax return for 2023. Because the Petitioner files income taxes as an S corporation, it asserts that USCIS may consider the personal income of its sole shareholder in determining its ability to pay. S corporations allow shareholders to report company incomes on their individual tax returns, thereby avoiding "double taxation" on profits. 26 U.S.C. § 1366. But, unlike sole proprietors, S corporations remain separate entities from their shareholders. *Matter of Aphrodite Invs., Ltd.*, 17 I&N Dec. 530, 531 (Comm'r 1980). Thus, shareholders of S corporations have no personal obligations to pay proffered wages of the companies they own. *See Sitar Rest. v. Ashcroft*, No. Civ.A.02-30197-MAP, 2003 WL 22203713, *2 (D. Mass. Sept. 18, 2003) (holding that "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage"). We therefore will not consider the personal income of the Petitioner's sole shareholder in determining its ability to pay.

The Petitioner states that its total income ($266,802 in 2023 and $266,513 in 2024) and total assets ($33,508 in 2023 and $133,717 in 2024) demonstrate that it "operates with financial surplus sufficient to meet its employment obligations." However, reliance on the Petitioner's total income is misplaced. Net income, not total income, can establish a petitioner's ability to pay the proffered wage in a given year.

Further, the Petitioner's total assets include depreciable assets that that it uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. The Petitioner's total assets must also be balanced by its liabilities. Otherwise, they cannot properly be considered in the determination of the Petitioner's ability to pay the proffered wage. Thus, the Petitioner's total assets do not establish its continuing ability to pay the proffered wage from the May 31, 2023 priority date.

As the Petitioner notes, USCIS may consider other factors potentially affecting a petitioner's ability to pay the proffered wage. Under *Sonegawa*, USCIS may consider factors such as: the number of years the Petitioner has conducted business; its number of employees; any business growth; its business reputation; its incurrence of any uncharacteristic losses or expenses; the Beneficiary's

replacement of another employee or outsourced service; or other potential factors. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15; *see also* 6 *USCIS Policy Manual* E.(4)(C)(3).

The record indicates that the Petitioner began operations in 2012 and, at the time of the petition's filing in August 2024, employed two people. Unlike the petitioner in *Sonegawa*, the company has not established its possession of a good business reputation or its incurrence of uncharacteristic losses or expenses during the relevant years. The Petitioner also has not established the Beneficiary's replacement of an employee or outsourced service.

The Petitioner notes its financial stability since it began operating in 2012. Its tax returns show that its total income based on profit had minimal fluctuation in 2023 and 2024. However, over the same period, the Petitioner's tax returns do not show a commensurate growth in the company's annual amounts of net income or net current assets. The record does not include tax returns for other years to support the Petitioner's assertion of stability or growth. Thus, the Petitioner's revenue stability from 2023 to 2024 does not demonstrate its ability to pay the proffered wage.

Upon assessment of the totality of the circumstances in this individual case, the record does not establish the Petitioner's continuing ability to pay the proffered wage pursuant to *Sonegawa*.

III. CONCLUSION

The Petitioner has not established its required ability to pay the offered job's proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.