U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41710797

Date: APR. 30, 2026

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a web hosting provider, seeks to employ the Beneficiary as a senior software engineer. The company requests his classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree." *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring academic or professional degrees above baccalaureates. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

Service Center Operations (SCOPS) denied the petition. SCOPS concluded the Petitioner did not establish that it had the ability to pay the Beneficiary's proffered wage from the priority date through to the time he obtains permanent residence. The Petitioner later filed a combined motions to reopen and reconsider that SCOPS dismissed. The matter is now before us on appeal. 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

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and an alien's employment in the job would not harm wages or working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(k)(3); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

Finally, if USCIS approves a petition, a beneficiary 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 Form ETA 9089 states the proffered wage of a senior software engineer is $141,378 per year. The petition's priority date is August 4, 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 provided IRS Forms W-2, Wage and Tax Statements, reflecting that it paid the Beneficiary $87,924.97 in 2023 and $90,694.58 in 2024. Likewise, the Petitioner provided a paystub for the Beneficiary from June 30, 2025, reflecting that he had been paid $45,000 up to that date. Thus, based solely on wages paid, the Petitioner did not demonstrate its ability to pay the proffered wage.

In denying the petition, SCOPS reasoned that negative net income and negative net current[3] assets listed in the Petitioner's 2023 IRS Form 1120, U.S. Corporation Income Tax Return, did not demonstrate its ability to pay the difference between the amount the Beneficiary was paid in 2023 and his proffered wage. The record does not contain tax returns for any other year. SCOPS further stated that provided bank statements did not sufficiently establish the Petitioner's ability to pay the proffered wage in lieu of the tax documentation required by the regulations. In addition, SCOPS concluded that they could not rely on unaudited financial statements, consistent with the regulations, to establish the Petitioner's ability to pay.

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[1] Although inapplicable here as the Petitioner states on the I-140 petition that it has 34 employees, 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).

[3] The Petitioner's 2023 IRS Form 1120 reflected net current income of -$2,845,967 and net current assets of -$2,315,035.

SCOPS later dismissed the Petitioner's combined motion to reopen and reconsider. On motion, the Petitioner discussed funding it had secured in May 2025 as well as additional investment projected in the first quarter of 2026. SCOPS reasoned that additional funding in 2025 and 2026 did not address its net income or assets in 2024 [or 2023], and therefore, its ability to pay in that year. SCOPS also stated that there were not other circumstances evident to indicate that the Petitioner had established the ability to pay in each required year from the priority date consistent with *Matter of Sonegawa*, 12 I&N Dec. at 612, 614-15.

On appeal, the Petitioner contends SCOPS erred in not accepting unaudited financial statements, profit and loss statements, bank records, and other evidence to demonstrate its ability to pay. The regulation at 8 C.F.R. § 204.5(g)(2) specifically requires that "evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." Unaudited financial statements would not meet that requirement. The regulation further notes that, "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."

Regarding bank statements, bank statements are not among the primary three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. As noted, while this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise provides an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its 2023 tax return, or would be reflected on its 2024 or 2025 tax returns if submitted, such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that considered in determining the Petitioner's net current assets.

The Petitioner points to a letter submitted on motion from an "institutional venture capital firm," [redacted] reflecting its investment in the Petitioner. The Petitioner asserts this company invested in the Petitioner and "expects to provide additional capital to [the Petitioner] in the near term to support the company's business plan and obligations." *See generally Sitar Rest. v. Ashcroft*, No. Civ.A.02-30197-MAP, 2003 WL 22203713, *2 (D. Mass. Sept. 18, 2003) (("[N]othing in the governing regulation, 8 C.F.R. § 204.5, permits the [immigration service] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."); *see generally* 6 *USCIS Policy Manual* E.4(B), Income and Assets of Others ("Generally, USCIS does not consider the financial resources of persons or entities that have no explicit legal obligation to pay the proffered wage, including . . . members or managers of a . . . LLC (even if the LLC is taxed as a partnership or disregarded entity."))

The Petitioner emphasizes the Beneficiary IRS Forms W-2, indicating these show it paid "substantial wages" to the Beneficiary from the priority date onward and that it has "in practice" been able to pay his salary. The W-2 statements submitted show only partial payment of the proffered wage, not the full amount, and would, therefore, not show that it has "in practice" been able to pay his full salary. For instance, the proffered wage is $141,378 per year, and provided IRS Forms W-2 indicate that the Beneficiary was paid $87,924.97 in 2023 and $90,694.58 in 2024. The Petitioner states that the evidence of these wages paid along with the additional investment from [redacted] establishes its ability to

pay from the priority date. However, as noted above, assets of another company cannot be used to establish the Petitioner's ability to pay the proffered wage. The Petitioner asserts that SCOPS' exclusive focus on tax returns and audited financial statements did not reflect proper analysis of the totality of the evidence, consistent with *Matter of Sonegawa*.

As discussed, the Petitioner does not assert, and the W-2 forms do not show, that it paid the Beneficiary's proffered wage in any particular year since the priority date, nor that in the one tax return it submitted that it had sufficient net income or net current assets in applicable tax returns sufficient to pay any differences between the proffered wage and wages paid to a beneficiary. *See generally* 6 *USCIS Policy Manual* E.(4)(C)(2).

On appeal, the Petitioner does not discuss the details of its ability to pay the Beneficiary's wage in each individual year from the priority date. Notably, the Petitioner only focuses on the specifics of 2023 and 2025, emphasizing its "financial capacity and a consistent practice of funding payroll and working capital in accordance with its operating model." The Petitioner further points to a $2 million equity investment made in the company by [redacted] in May 2025. However, the Petitioner's assertion that it consistently had the financial capacity and working capital to pay the Beneficiary's wages in each year from the priority date does not explain why it did not either pay his proffered wage during each year or why its 2023 tax return did not exhibit sufficient net income or net current assets to pay any differences between the proffered wage and the wages paid to a beneficiary. In fact, given that this appeal was filed in December 2025, it is questionable that the Petitioner has not submitted its 2024 IRS Form 1120, as required as continuing evidence of its ability to pay the proffered wage in that year pursuant to the regulations. *See generally* 6 *USCIS Policy Manual* E.(4)(C)(2). Further, it is not clear how a capital investment in the Petitioner in 2025, and any in the future, would impact the Petitioner's ability to pay the remainder of the Beneficiary's proffered wages in 2023 or 2024. The petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

Further, in *Matter of Sonegawa*, 12 I&N Dec. at 612, 614-615, the petitioner established that based on several factors including its outstanding reputation, it would resume profiting after its unusual business disruption. In considering the totality of the circumstances, we may consider evidence of the Petitioner's ability to pay beyond its net income and net current assets, including such factors as: the number of years it has conducted business; the growth of its business; its number of employees; the occurrence of any uncharacteristic business expenditures or losses; its reputation in its industry; whether the Beneficiary will replace a current employee or outsourced service; or other evidence of its continuing ability to pay the proffered wage. *Id.* Here, the Petitioner does not sufficiently discuss these factors, such as the number of years it has done business, its growth, uncharacteristic business expenditures or losses; but mainly relies on additional investments provided by [redacted] in 2025 and beyond as evidence of its reputation and financial viability to pay the Beneficiary's wages.[4] However,

[4] Notably, the basis of the [redacted] letter submitted on appeal is not entirely clear. The author states that "in their professional opinion" the Petitioner "definitely had the ability to pay the offered wage of $141,378 per year to [the Beneficiary]." However, the background of the letter's author and entire scope of documents they examined to reach this determination is unclear. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

as noted, the Petitioner does not specifically address how this additional investment in 2025 and beyond impacted its ability to pay the Beneficiary's wages in 2023 or 2024. In addition, the investment amount of $2 million in 2025 appears rather modest in relation to its overall financial picture and does not sufficiently establish the outstanding reputation of the company demonstrated in *Matter of Sonegawa*. The Petitioner has not submitted tax returns for any other year to demonstrate any historic pattern of growth and provides no explanation for the unavailability of its 2024 federal tax returns or other audited financial statements to demonstrate its ability to pay.

For the foregoing reasons, we agree with SCOPS that the Petitioner did establish its ability to pay the Beneficiary's proffered wage as of the priority date continuing until he obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). As such, the appeal must be dismissed.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.