U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43814364

Date: AUG. 7, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner operates a restaurant and seeks to employ the Beneficiary as a cleaner. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as an "other worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring less than two years of training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

U.S. Citizenship and Immigration Services (USCIS) denied the petition. The Acting Associate Director of Service Center Operations concluded that the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, the company submits additional evidence that it claims establishes its ability to pay.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we decline to consider the Petitioner's appellate evidence and agree with the Director that the company has not established its ability to pay the proffered wage. We will therefore dismiss the appeal.

I. LAW

Immigration as an "other," or "unskilled," worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: (1) insufficient U.S. workers are able, willing, qualified, and available for an offered job; and (2) an alien's employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to USCIS. *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). USCIS determines, among other things, whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(D).

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(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

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 U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of a petitioner's annual reports, federal tax returns, or audited financial statements. *Id.*; *see generally* 6 *USCIS Policy Manual* E.4(A), www.uscis.gov/policy-manual ("[T]he petition must include copies of the petitioner's annual reports, federal tax returns, or audited financial statements for each available year from the priority date.")[1]

When determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year, starting with the year of a petition's priority date. *See generally* 6 *USCIS Policy Manual* E.4(C)(1). If a petitioner did not annually pay the full proffered wage or did not pay a beneficiary at all, the Agency considers whether the business generated annual amounts of net income or net current assets sufficient to pay any differences between the proffered wage and the wages paid. *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 Petitioner stated that it would pay the Beneficiary $31,540 a year in the offered cleaner job. The petition's priority date is July 2, 2024, the date DOL accepted the company's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

At the time the Director sent the Petitioner a request for additional evidence (RFE), regulatory required evidence of the company's ability to pay the proffered wage in 2025 was not yet available. Thus, for purposes of this decision, we will consider the company's ability to pay only in 2024, the year of the petition's priority date.[3]

The Petitioner did not submit any evidence that it paid the Beneficiary in 2024. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

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[1] If a prospective U.S. employer has at least 100 employees, USCIS may accept a statement from a financial officer of the employer in lieu of the normal regulatory required evidence. 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(A). Here, the Petitioner does not claim to employ 100 people.

[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); *Décor Team LLC v. McAleenan*, 520 F.Supp.3d 1212, 1223-25 (D. Ariz. 2021).

[3] In any future filings in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2025. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay "continuing until the beneficiary obtains lawful permanent residence").

The Petitioner provided a copy of a "Federal Income Tax Summary" for 2024. The summary, which the company states on appeal was created by an accounting software package, indicated generation of net income of $94,129 that year.

The Director, however, sent the Petitioner a RFE, noting that the tax summary was not a copy of the Petitioner's complete federal income tax return for 2024. *See* 6 *USCIS Policy Manual* E.4(A)(2) ("Submitted tax returns should be complete, including all required schedules.") The RFE asked the company to submit complete copies of annual reports, federal tax returns, or audited financial statements for 2024.

The Petitioner's RFE response included: an unaudited 2025 profit-and-loss statement; monthly bank statements from December 2025 through February 2026; and another copy of the 2024 federal income tax summary. The Petitioner argued that the tax summary demonstrated its ability to pay the proffered wage in 2024, while the other materials show its continued "financial strength."

The Director denied the petition for failure to provide complete copies of any of the regulatory required forms of evidence for 2024. *See* 8 C.F.R. § 204.5(g)(2) (requiring petitioners to provide "copies of annual reports, federal tax returns, or audited financial statements").

On appeal, the Petitioner submits additional evidence, including a complete copy of a 2024 federal income tax return. Like the 2024 tax summary, the return reflects net income of $94,129.

This tax return, however, would not demonstrate the Petitioner's ability to pay the proffered wage in 2024. The tax return lists a different name and federal employer identification number (FEIN) than that of the Petitioner as stated on the: Form I-140, Immigrant Petition for Alien Workers; accompanying labor certification; and application for prevailing wage determination. Based on the companies' names and FEINs, online state government records list the Petitioner and the other company as separate entities. *See* Fla. Dep't of State, Div. of Corps., "Search Records," https://dos.fl.gov/sunbiz/search. Like the tax summary, the tax return lists an FEIN of [redacted] The other documents of record, however, list the Petitioner's FEIN as [redacted]. Thus, the Petitioner has not established that the financial information in the 2024 tax return is the petitioning company's. *See* 8 C.F.R. § 204.5(g)(2) (requiring that "*the prospective United States employer* has the ability to pay the proffered wage") (emphasis added); *see also Sitar Rest. v. Ashcroft*, No. CIV.A.02-30197-MAP, 2003 WL 22203713, at *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.")[4]

Even if the Petitioner demonstrated that the 2024 tax return contains the company's financial information, we would decline to consider the new evidence on appeal. The Petitioner contends that:

[4] *See generally* 6 *USCIS Policy Manual* E.4(B) ("Generally, USCIS does not consider the financial resources of persons or entities that have no explicit legal obligation to pay the proffered wage, including a parent company, shareholders and officers of a corporation, members or managers of a limited liability company (LLC) (even if the LLC is taxed as a partnership or disregarded entity), and limited partners.")

> the denial was based solely on a technical document deficiency – not an actual inability to pay. … The underlying financial data was present in the record at all times; the sole deficiency was that the tax documentation was submitted in a condensed summary format rather than as the complete [IRS] Form 1065[, U.S. Return of Partnership Income,] with all required schedules.

Citing a non-precedent decision of ours from 2023, the Petitioner states: "The AAO has previously recognized that where a technical documentation deficiency prevents evaluation of otherwise sufficient financial capacity, remand for further development of the record is appropriate."

Based on the information provided by the Petitioner, we were unable to locate the 2023 decision that the company cites to. But a non-precedent decision on another petition would not bind us in this matter. *See* 8 C.F.R. § 103.10(b) (stating that only precedent decisions bind Department of Homeland Security officers in proceedings involving the same issues).

Moreover, in this matter, the Director's RFE specifically asked the Petitioner to submit a complete copy of its 2024 federal income tax return, among other acceptable documents, and afforded the company a reasonable opportunity to provide it. The company has not documented, or even claimed, that the complete tax return was unavailable at the time of the RFE response deadline. Thus, even if the tax return reflected the Petitioner's financial information, we would decline to consider the new evidence on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (not considering new appellate evidence where a petitioner received notice of the required materials and a reasonable opportunity to provide them); *see also* 8 C.F.R. § 103.2(b)(11) (requiring submission of all evidence in response to a RFE together at one time).

III. CONCLUSION

The Petitioner has not demonstrated its ability to pay the offered job's proffered wage. We will therefore affirm the petition's denial.

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.