U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40739953

Date: DEC. 22, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a clothes wholesaler, seeks to employ the Beneficiary as an information and finance systems manager. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish its continuing ability to pay the proffered wage to the Beneficiary, as well as the beneficiaries of its other petitions, from the priority date onward. SCOPS also noted inconsistencies in the record, as the Petitioner's federal employer identification number (FEIN) listed on the tax returns did not match the FEIN listed on the petition or the labor certification. 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

To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, an alien may finally 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 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 must generally include copies of annual reports, federal tax returns, or audited financial statements. *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).[1]

The labor certification states the proffered wage of the offered position of information and finance systems manager as $114,067 per year. The petition's priority date is December 11, 2020, 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 does not claim that it employed or paid wages to the Beneficiary in any year.

The record demonstrates that the Petitioner is a single-member limited liability company (LLC) established in 2016 with four employees. On the labor certification and on the Form I-140 petition, the Petitioner listed its FEIN as [redacted] With the initial filing, the Petitioner did not submit any regulatory prescribed evidence of its continuing ability to pay the Beneficiary the proffered wage. SCOPS issued a request for evidence (RFE) dated January 30, 2024, for this evidence, as well as other evidence of eligibility for the requested benefit.

In response to the 2024 RFE, the Petitioner submitted Internal Revenue Service (IRS) Form 1040 Schedule C, Profit or Loss from Business (Sole Proprietorship), for 2022.[2] The FEIN listed on Schedule C is [redacted] which differs from the Petitioner's claimed FEIN on the labor certification and the Form I-140 petition.

SCOPS issued a second RFE dated January 16, 2025. SCOPS noted the inconsistency in the Petitioner's FEIN and specifically requested evidence of the Petitioner's ability to pay the proffered wage reflecting the FEIN [redacted] in the form of certified IRS tax transcripts of its federal income tax returns.

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[1] 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).

[2] The Petitioner's net income is reported on its member's IRS Form 1040, U.S. Individual Income Tax Return, Schedule C, at line 31.

In response to the 2025 RFE, the Petitioner submitted IRS Form 1040 Schedule C for 2021 to 2024, all reflecting the FEIN [redacted]. Counsel for the Petitioner provided the following explanation, "[The Petitioner] was formerly known as [redacted], which operated under FEIN [redacted]. Following a corporate restructuring, the business transitioned to its current legal form as [redacted] now registered under FEIN [redacted]

In response to the 2025 RFE, the Petitioner also submitted the 2006 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for [redacted] with FEIN [redacted]. Counsel asserted that this tax return identifies the sole shareholder of [redacted] as [redacted], the Petitioner's single-member sole proprietor.

SCOPS concluded that the tax returns in the record did not show that the Petitioner has a net income equal to or greater than the proffered wage in each year from the priority date. Specifically, SCOPS noted that the tax returns reflected a different FEIN than the Petitioner. SCOPS further noted that the Petitioner filed another Form I-140 petition for another beneficiary, for which the Petitioner is also obligated to establish an ability to pay the proffered wage.[3]

On appeal, the Petitioner asserts that SCOPS disregarded the clarification of the discrepancy in its FEIN and failed to consider its net current assets and the totality of the circumstances in analyzing its ability to pay the Beneficiary the proffered wage. Counsel for the Petitioner states that it "is the successor entity to [redacted] which operated under FEIN [redacted]" and that "ownership and control remained unchanged." The Petitioner submits no new evidence on appeal.

A labor certification remains valid only for the "particular job opportunity," noncitizen, and geographical area of intended employment stated on it. 20 C.F.R. § 656.30(c)(2). Also, an employer must list a valid FEIN on a labor certification. 20 C.F.R. § 656.3 (defining the term "employer"). Here, the accompanying labor certification identifies a job offer for information and finance systems manager by [redacted] with FEIN [redacted]

A petitioner may use the labor certification of another employer only if the petitioner establishes itself as the employer's "successor in interest." *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). For immigration purposes, a successor in interest must acquire the rights and liabilities needed to carry on the labor certification employer's business or a discrete part of it. A successor must: 1) demonstrate that, except for the change of employer, the job opportunity remains materially the same as listed on the labor certification; 2) describe and document the transaction(s) by which the successor acquired control of the labor certification business; and 3) demonstrate eligibility for the requested benefit, including the abilities of the original employer, the successor, and any intervening owners to continuously pay the proffered wage of the offered position. *Id.* at 482-83.

Although we acknowledge counsel's explanation for the different FEIN in response to the 2025 RFE and his statements on appeal that the Petitioner and the entity now using FEIN [redacted] are the same, the Petitioner does not submit evidence to corroborate these statements. Counsel's

[3] Where a petitioner has filed I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of the filing's grant, a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple petitions).

unsubstantiated assertions do not constitute evidence. See, e.g., *Matter of S-M-,* 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The record does not document when the "corporate restructuring" or change in FEIN occurred. Nor does the record document how or whether the Petitioner registered this change with the IRS.

Because the tax returns pertain to a different FEIN [redacted], we cannot conclude that the evidence in the record reflects the Petitioner's financial information. A legal entity generally has a separate existence from its shareholders, members, managers, officers or owners. Generally, we do 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 of a limited partnership. *See Matter of Aphrodite Investments Ltd.,* 17 I&N Dec. 530 (Comm'r 1980) (finding that a corporation is a separate and distinct legal entity from its owners or stockholders); see also *Sitar Restaurant v. Ashcroft,* No. CIV.A.02-30197-MAP (D. Mass. Sept. 18, 2003) (finding that nothing in the governing regulation requires USCIS to consider the financial resources of individuals or entities who have no legal obligation to pay the wage). The record does not include any evidence identified in 8 C.F.R. § 204.5(g)(2) for the Petitioner with FEIN [redacted] as listed on the labor certification and the Form I-140 petition. Therefore, the Petitioner has not established its continuing ability to pay the Beneficiary the proffered wage in any relevant year.

Even if we accepted that the tax returns in the record pertain to the Petitioner with FEIN [redacted] which we do not, the net income reflected in the tax returns does not demonstrate the Petitioner's ability to pay the proffered wage in all relevant years.

As noted above, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiary of the other Form I-140 petition that was pending or approved as of, or filed after, the priority date of the current petition. USCIS records reflect that the Petitioner filed a Form I-140 petition for another beneficiary with a priority date of January 23, 2023, and with a proffered wage of $156,790. The Petitioner does not contest its obligation to pay this wage in addition to the instant Beneficiary.

The tax returns reflect the following net income for the entity with FEIN [redacted]

Year	Net Income	Wage Obligation
2020	-	$114,067
2021	$6,250	$114,067
2022	$153,238	$114,067
2023	$239,815	$270,857
2024	$292,510	$270,857

The record lacks regulatory required copies of an annual report, federal tax return, or audited financial statements for 2020, the year of the petition's priority date. Further, the net income was not equal to or greater than the proffered wage in 2021 or the combined proffered wages in 2023.

As noted above, USCIS may also consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). 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 Id.* at 614-15; *see also* 6 *USCIS Policy Manual* E.(4)(C)(3).

The record indicates that the Petitioner was established in 2016 and employs four individuals. The tax returns for the entity with FEIN [redacted] reflect no payment of salaries or wages in 2021 to 2023. The record does not include the Petitioner's tax returns with FEIN [redacted] or other financial information for any year. Nor does the record demonstrate the Petitioner's possession of an outstanding business reputation in its industry or its incurrence of uncharacteristic expenses or losses that prevented its ability to pay the proffered wage in any year. Thus, based on a totality of the circumstances under *Sonegawa*, the Petitioner has not demonstrated its continuing ability to pay the proffered wage from the petition's priority date onward.

The record therefore does not establish the Petitioner's ability to pay the proffered wage "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence." *See* 8 C.F.R. § 204.5(g)(2).

III. CONCLUSION

The Petitioner has not demonstrated its ability to pay the proffered wage from the priority date onward, as required by 8 C.F.R. § 204.5(g)(2). Therefore, we will dismiss the appeal.

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.