U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40794997

Date: FEB. 3, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a senior care staffing business, seeks to employ the Beneficiary as a personal care aide. It requests classification of the Beneficiary under the third-preference, immigrant category as an unskilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based category allows a U.S. business to sponsor an alien for lawful permanent resident status based on a job offer requiring less than two years of training or experience.

Service Center Operations (SCOPS) initially denied the petition, concluding that the Petitioner did not submit regulatory required evidence to demonstrate its ability to pay the offered job's proffered wage. Following the Petitioner's appeal, we concluded that the record did include regulatory required evidence and withdrew SCOPS' decision. We remanded the matter for further consideration and SCOPS again denied the petition. On remand, SCOPS concluded that the Petitioner failed to comply with the Form I-140 filing instructions and did not establish its ability to pay the Beneficiary the proffered wage. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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 ETA Form 9089 states the proffered wage of personal care aide as $23,878 per year. The petition's priority date is October 25, 2021, 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's initial filing included copies of its bank account statements from October 2021 through November 2022. In response to SCOPS' request for evidence (RFE) dated July 12, 2023, the Petitioner submitted a letter from its owner, copies of additional bank statements from November 2022 through September 2023, and a copy of its owner's personal federal income tax return for 2021.

The Petitioner states that it was established in 2014 and has seven employees. The Petitioner's tax returns indicate that it is a single-member limited liability company (LLC), taxed as a "disregarded entity." *See* 26 C.F.R. § 301.7701-2(a); U.S. Internal Revenue Service (IRS), "Single member limited liability companies," www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies. Thus, for ability-to-pay purposes, Schedule C of the Petitioner's owner's tax return represents the company's 2021 federal income tax return. On appeal, we withdrew SCOPS' determination that the Petitioner had not submitted required evidence of its ability to pay the proffered wage.

---

[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).

Although the appeal included the Petitioner's owner's 2022 tax return, including Schedule C for the company, we were unable to determine that the Petitioner has the continuing ability to pay the Beneficiary the proffered wage. In our appellate decision, we noted that both of the Petitioner's Schedules C reflect that in 2021 and 2022 the company "broke even," generating neither a profit nor a loss. We also noted that the Petitioner's bank statements show monthly balances ranging from $59,760.09 to $132,829.04, but that USCIS policy requires the company to submit an audited balance sheet listing any liabilities. *See* 6 *USCIS Policy Manual* E.(4)(B).

In addition, we noted in our appellate decision that the record included a "certificate of deposit" (CD) for $125,000 in the Petitioner's name, but the record did not indicate the period for which the Petitioner's funds must be held or whether the company would face any early-withdrawal penalties. We also noted that USCIS records indicate that, after this petition's priority date, the Petitioner filed at least four Form I-140 petitions for other beneficiaries.[3] We explained that the Petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains U.S. permanent residence. *See Patel v. Johnson*, 2 Fed.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple Form I-140 petitions).[4]

Finally, in our appellate decision we noted that online government records in the Petitioner's home state list the company's business status as "pending inactive." *See* Va. State Corp. Comm'n, "Business Entity Search," cis.scc.virginia.gov/ EntitySearch/Index. The business status casts doubt on whether the company still conducts business and still intends to employ the Beneficiary in the offered job.

In remanding the matter, we stated that SCOPS should notify the Petitioner of these issues and afford it a reasonable opportunity to respond. On remand, however, SCOPS did not issue any notice to the Petitioner. Rather, SCOPS denied the petition again, concluding that the Petitioner did not comply with the Form I-140 instructions because it did not submit regulatory required evidence of its ability to pay the proffered wage with the initial filing, and because it submitted the Petitioner's owner's tax return in response to the July 12, 2023 RFE, rather than the company's tax return. However, as we stated in our previous appellate decision, Schedule C of the Petitioner's owner's tax return represents the company's federal income tax return. Therefore, SCOPS' decision is again withdrawn.

SCOPS did not inform the Petitioner of the remaining evidentiary questions regarding its ability to pay the proffered wage or the need for additional evidence of its continuing intent to employ the Beneficiary in the offered job. On remand, SCOPS should notify the Petitioner of these issues and afford it a reasonable opportunity to respond. SCOPS should also ask the company for evidence of its continuing ability to pay the proffered wage from 2023 onward, if available. *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").

[3] USCIS records identify the four petitions by the following receipt numbers: [redacted]

[4] The Petitioner need not demonstrate its ability to pay proffered wages of petitions that it withdrew or that USCIS rejected, denied, or revoked. *See* 6 *USCIS Policy Manual* E.(4)(D)(2). The company also need not establish its ability to pay proffered wages before the priority dates of corresponding petitions or after corresponding beneficiaries obtain U.S. permanent residence. *Id.*

If supported by the record, SCOPS may further inform the Petitioner of any additional potential denial grounds. SCOPS, however, must notify the company of all potential denial grounds and afford it a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, SCOPS should review the entire record and enter a new decision.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.