U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36915046

Date: FEB. 21, 2025

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner is a limited liability company (LLC) whose sole owner wants the Beneficiary to serve as a nanny for his two sons. 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. 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

The Director of the Nebraska Service Center denied the petition, concluding that the petitioning LLC did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, the company contends that, when determining its ability to pay, the Director should have considered its owner's personal finances because a state law could make him personally liable for the Beneficiary's wages.

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 conclude that only the LLC's finances – not those of its legally separate sole owner – can establish its ability to pay a 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: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and an alien's permanent employment in the position would not harm wages and working conditions of U.S. workers with similar jobs. 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 U.S. Citizenship and Immigration Services (USCIS). 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(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 of the Act, 8 U.S.C. § 1255.

II. FACTS

The petitioning LLC, a real estate investment company, filed a labor certification application for the offered nanny job in September 2022. The record indicates that the job involves caring for the two sons of the Petitioner's sole owner, including planning and preparing meals.

After DOL certified the labor application in September 2023, the Petitioner filed this petition in December 2023. In a letter accompanying the petition, the company's sole owner stated that the petitioning LLC:

> allows me to manage real estate investments as well as other personal and family business through a legal structure that offers some protection to my other enterprises and assets. For the purposes of this visa petition, [the Petitioner] should be understood as a limited liability company which serves as a sponsor for our personal household employees. Note that the income from this entity flows through onto o[ur] personal tax returns.

In August 2024, the Director mailed a request for additional evidence (RFE) to the Petitioner. The RFE requested additional proof of the company's ability to pay the job's annual proffered wage of $27,269 and confirmation of the LLC's intent to employ the Beneficiary.

The Petitioner's RFE response included a letter from former counsel. The letter stated: "While . . . the business [of the company's sole owner] is real estate, we note that he uses this entity for the household expenses and employees." The letter challenged the RFE's statement that, when determining the company's ability to pay the job's proffered wage, USCIS could not consider the owner's personal finances. The letter stated that the LLC "is NOT treated as a separate entity [from its owner] for tax purposes, and there is no basis for treating it as a separate entity for ability to pay purposes."

In November 2024, the Director denied the petition, concluding that the petitioning company did not demonstrate its ability to pay the offered job's proffered wage.[1] As to the personal finances of the company's owner, the decision stated: "USCIS will not consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

This timely appeal followed.

[1] It is unclear whether the petitioning LLC or its sole owner intends to employ the Beneficiary in the offered job. *See* section 204(a)(1)(F) of the Act (requiring a petitioner to be "desiring and intending to employ [an alien] within the United States"). As the Director did not decide the petition on that basis, we need not consider the issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

III. ANALYSIS

A. Ability to Pay the Proffered Wage

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 annual reports, federal tax returns, or audited financial statements. *Id.*

In determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage in relevant years, 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 amounts of net income or net current assets sufficient to pay any differences between the proffered wages 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 the 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]

As previously indicated, the Petitioner's labor certification states the proffered wage of the offered nanny job as $27,269 a year. The petition's priority date is September 27, 2022, the date DOL accepted the accompanying 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 of the appeal's filing in December 2024, required evidence of the Petitioner's ability to pay the proffered wage that year was not yet available. Thus, for purposes of this decision, we will determine the company's ability to pay only in 2022, the year of the petition's priority date, and 2023.

The record does not indicate the Petitioner's payment of wages to the Beneficiary in 2022 or 2023. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

As previously indicated, the record shows that the Petitioner is a single-member LLC. As an LLC with only one owner, the company need not file federal income tax returns. *See* U.S. Internal Revenue Serv. (IRS), "Single member limited liability companies," www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies (explaining that, for federal income tax purposes, the IRS may treat single-member LLCs as "disregarded entities" indistinguishable from their owners). Rather, the LLC's sole owner may list the business's income on Schedules C, Profits or Losses from Business, in his individual federal income tax returns. *Id.*

The Petitioner submitted copies of its owner's federal income tax returns for 2022 and 2023. The Schedule C of the 2022 return reflects the LLC's business income of -$74,664. The 2023 Schedule C

[2] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Estrada-Hernandez v. Holder*, 108 F. Supp. 3d 936, 942-43 (S.D. Cal. 2015).

lists business income of -$44,083. Neither of these negative amounts equals or exceeds the annual proffered wage of $27,269. Thus, as the Director found, neither the Petitioner's wages paid nor net income amounts demonstrate the company's ability to pay the proffered wage in 2022 or 2023.[3]

As previously indicated, we may consider other factors potentially affecting the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15; 6 *USCIS Policy Manual* E.4(C)(3). We may consider: the number of years the company has conducted business; its number of employees; growth in its business; uncharacteristic losses or costs incurred; its reputation in its industry; the Beneficiary's replacement of a current employee or outsourced service; or other issues affecting the company's ability to pay the proffered wage. *Id.*

The record shows that the Petitioner has conducted business since 2019 and employs one person.[4] The Schedules C of the company's owner indicate that the LLC's gross annual income from 2022 to 2023 increased from $88,250 to $106,113. Contrary to the petitioner in *Sonegawa*, however, the record does not indicate the Petitioner's incurrence of uncharacteristic business losses or costs in the relevant years or its possession of a good reputation in its industry. The company also has not demonstrated the Beneficiary's replacement of a current employee or outsourced service or any other factors affecting its ability to pay the proffered wage. Thus, on balance, a totality of the circumstances does not establish the company's ability to pay.

On appeal, the Petitioner asserts that the Director erroneously disregarded its owner's personal finances. As previously indicated, the company submitted copies of the individual federal income tax returns of its owner for 2022 and 2023. The company also provided a list of the household living expenses of him, his spouse, and two sons. After subtracting the living expenses from the owner's adjusted gross income amounts in each year, the Petitioner argues that its owner had the ability and willingness to pay the job's annual proffered wage in 2022 and 2023.

The Director, however, correctly disregarded the personal finances of the Petitioner's owner as evidence of the company's ability to pay the proffered wage. The applicable regulation requires "the prospective United States employer" to demonstrate its ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2). The Petitioner's Form I-140 and accompanying labor certification clearly list the name and federal employer identification number of the petitioning LLC – not its owner – as the Beneficiary's prospective U.S. employer.[5] Thus, consideration of the owner's personal resources does not satisfy the regulation's evidentiary requirements. *See 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.")

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[3] Schedules C do not contain sufficient information to determine a petitioner's current assets and liabilities. USCIS is therefore unable to calculate the Petitioner's net current asset amounts in 2022 or 2023.

[4] The labor certification states the Petitioner's employment of one person. But the Form I-140, Immigrant Petition for Alien Worker, and the company's federal income tax returns for 2022 and 2023 do not indicate that the LCC had any employees.

[5] The Form I-140 and labor certification list different worksites for the offered job. The labor certification states the worksite as the petitioning LLC's address. The Form I-140 lists the worksite as the home of the company's sole owner. Both sites are in the same metropolitan statistical area and therefore reflect the same prevailing wage for the offered job. *See* 20 C.F.R. § 656.3 (defining the term "area of intended employment").

The Petitioner notes that USCIS sometimes considers individual personal finances as evidence of prospective employers' abilities to pay proffered wages. For example, USCIS considers the personal assets and liabilities of sole proprietors and individual employers of domestic workers. *See generally* 6 *USCIS Policy Manual* E.4(B), Income and Assets of Others. But the Agency considers those personal finances when sole proprietors and individual domestic employers list themselves as prospective U.S. employers on Forms I-140 and accompanying labor certifications. As discussed above, the prospective U.S. employer in this case is the petitioning LLC, not its owner. Unlike sole proprietors and other individuals, a legal entity generally has a separate existence from its shareholders, members, managers, officers, or owners. *See* Cal. Corps. Code § 17701.04(a) ("A limited liability company is an entity distinct from its members.")

The Petitioner also notes that, although certain partnerships are separate legal entities from their partners, general partners are personally liable for the debts of their businesses. *See generally* 6 *USCIS Policy Manual* E.4(B), Income and Assets of Others. Thus, if a petitioning partnership lacks sufficient net income or net current assets to establish its ability to pay a proffered wage, USCIS may consider whether the partnership's general partner is individually willing and able to pay the proffered wage. *Id.* As the Petitioner is an LLC, however, these exceptions for sole proprietors, other individuals, and general partners do not apply. A single-member LLC is not considered separate from its owner for federal income tax purposes. But an LLC's single member is not personally liable for the business's debts. 6 *USCIS Policy Manual* E.4(B) n15. An LLC's sole owner therefore lacks a legal obligation to pay a proffered wage for immigration purposes. *Id.*

The Petitioner further contends that USCIS must consider the personal finances of the company's owner because, under state law, courts may hold him personally liable for employees' wages. A California labor law states: "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, any provision regulating minimum wages or hours or days of work . . . may be held liable as the employer for such violation." Cal. Labor Code § 558.1(a). The law defines a person acting on an employer's behalf as "a natural person who is an owner, director, officer, or managing agent of the employer." Cal. Labor Code § 558.1(b). California courts have interpreted the law to hold owners, directors, officers, and managing agents personally liable for their involvement in violations of certain wage and hour laws. *See, e.g., Espinoza v. Hepta Run, Inc.*, 74 Cal.App.5th 44, 57-58 (Cal. Ct. App. 2022). Because the Petitioner's owner might become personally liable for the Beneficiary's wages, the company argues that USCIS must consider the owner's personal finances.

The Petitioner broadly asserts that California "imposes personal liability on owners and/or certain corporate officers to ensure [employee] wage payments." But the company's owner would incur personal liability for the Beneficiary's wages only if he violated certain wage and hour laws. The regulation at 8 C.F.R. § 204.5(g)(2) does not allow USCIS to consider the personal finances of the LLC's sole owner on the mere chance that he might violate state labor laws in the future.

California law specifies personal liability as a potential penalty for certain labor violations. But, with the exception of sole proprietors, individual domestic employers, and general partners, U.S. immigration law does not similarly hold employers' principals personally liable for paying a proffered wage. The regulation requires "the prospective United States employer" - not generally its owners, directors, officers, or managing agents - to demonstrate ability to pay a proffered wage. 8 C.F.R.

§ 204.5(g)(2). The Director therefore properly disregarded the personal finances of the Petitioner's owner as evidence of its ability to pay.

III. CONCLUSION

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

ORDER: The appeal is dismissed.