U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41497879

Date: FEB. 26, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a restaurant, seeks to employ the Beneficiary as a cook. 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) denied the petition, concluding that the Petitioner did not submit sufficient evidence to demonstrate its ability to pay the Beneficiary's proffered wage. 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 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]

When a petitioner has filed other I-140 petitions, however, it must establish that its job offer is realistic not only for the instant beneficiary, but also for the beneficiaries of its other I-140 petitions (I-140 beneficiaries). A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977). Accordingly, a petitioner must demonstrate its ability to pay the combined proffered wages of the instant beneficiary and every other I-140 beneficiary from the priority date of the instant petition until the other I-140 beneficiaries obtain lawful permanent resident status. *See Patel v. Johnson*, 2 F.Supp. 3d 108, 124 (D.Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). *See also* 6 *USCIS Policy Manual* E.4(D)(2).

The ETA Form 9089 states the proffered wage of a cook is $34,653 per year. The petition's priority date is February 27, 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 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.

In support of the petition, the Petitioner submitted a 2022 IRS Form 1065, U.S. Return of Partnership Income, reflecting that it had $59,990 in net income. SCOPS later issued a request for evidence (RFE) in July 2025 stating USCIS records reflected that the Petitioner had filed multiple petitions for beneficiaries beyond the Beneficiary. SCOPS indicated that the Petitioner must show the continuing ability to pay the proffered wages of all beneficiaries from each petition's priority date. SCOPS requested that the Petitioner submit 2023 and 2024 U.S. federal income tax returns as well as a list of all Form I-140, Petitions for Immigrant Workers, current in 2023 and 2024, including the names of

[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).

the beneficiaries, their wages, priority dates, the statuses of these petitions, and whether the beneficiaries had obtained lawful permanent residence.

In response, the Petitioner stated that it sponsored one other beneficiary (Beneficiary 2) on an I-140 petition beyond the instant Beneficiary. It indicated that Beneficiary 2 had a priority date of May 15, 2023, and a wage of $30,000 annually. The Petitioner also provided a 2023 Form 1065 showing that it had $86,203 in net income in that year and a 2024 Form 1065 reflecting $124,676 in net income.

In denying the petition, SCOPS reasoned that USCIS records indicated that the Petitioner had "filed for three (3) additional beneficiaries" beyond those discussed in the Petitioner's RFE response. SCOPS stated the following:

> While your net current income is greater than the instant petition's proffered wage, the net current income for the year 2023 to 2024 is insufficient for the total proffered wages of $171,959 of all petitions filed from the priority date.

On appeal, the Petitioner asserts that it also sponsored one other beneficiary (Beneficiary 3) on an I-140 petition, which was approved with a prevailing wage of $23,733 per year and a priority date of November 6, 2020. The Petitioner contends that its net income in 2023 exceeds the total of the instant Beneficiary's prorated wage, the prorated wage of Beneficiary 2, and the annual wage of Beneficiary 3 ($71,360.50).[3] Likewise, the Petitioner asserts that its net income in 2024 exceeds the total wages of all three beneficiaries ($88,386).

Upon review, we will remand this matter for entry of a new decision consistent with the following analysis.

A petitioner must demonstrate its ability to pay the proffered wages for each beneficiary for each year starting from the priority date of the petition under review.[4] However, we do not consider a petitioner's ability to pay the proffered wage pursuant to another Form I-140 beneficiary if: 1) that beneficiary obtains lawful permanent residence; 2) the Petitioner withdrew the Form I-140 petition filed on behalf of another beneficiary; or 3) USCIS denied or revoked the approval of the petition without a pending appeal or motion. We also do not consider the Petitioner's ability to pay in years before the priority date of the Form I-140 filed on behalf of the other beneficiary. Analysis to determine the ability to pay the combined wages is the same as that for a single beneficiary, considering wages paid to any of the beneficiaries. *See generally* 6 *USCIS Policy Manual* E.(4)(D)(2), www.uscis.gov/policy-manual.

In the denial, SCOPS erred in analyzing the Petitioner's ability to pay the Beneficiary's wage along with those of Beneficiaries 2 and 3 aggregately in 2023 and 2024, stating that the total wages during

[3] A petitioner may request that the proffered wage be prorated for the portion of the year that occurred after the priority date. In addressing such a request, we will not consider 12 months of net income towards its ability to pay the proffered wage for a period of less than 12 months. In this scenario, we may prorate the proffered wage if the record contains evidence of net income and/or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date, or both. *See generally* 6 *USCIS Policy Manual* E.(4)(D)(1), www.uscis.gov/policy-manual.
[4] *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries).

both years were $171,959. SCOPS provided insufficient information on how they arrived at this total amount of wages in 2023 and 2024. Further, the stated wages during both years are inconsistent with USCIS records which indicate, as asserted by the Petitioner on appeal, that it only sponsored Beneficiaries 2 and 3 on approved I-140 petitions beyond the instant Beneficiary as of her priority date to this adjudication. Therefore, on remand, SCOPS should consider the correct information regarding which beneficiaries must be assessed when determining the Petitioner's ability to pay, consistent with the guidance reflected above. Further, SCOPS should determine the Petitioner's ability to pay the wages of all applicable beneficiaries during each individual year from the priority date, including 2023, 2024, and now 2025 based on the required continuing ability to pay requirement. *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").

Given the errors and deficiencies in the denial, we will remand the matter for further consideration and entry of a new decision. SCOPS may request any additional evidence considered pertinent to any new determinations. However, SCOPS must notify the Petitioner of all potential denial grounds and afford it a reasonable opportunity to respond, including providing accurate and clear support for its calculations. We express no opinion regarding the ultimate resolution of this matter on remand.

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