U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40785069

Date: JAN. 28, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a restaurant operator, seeks to employ the Beneficiary as a line cook. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

Service Center Operations (SCOPS) denied the petition. SCOPS concluded that the Petitioner demonstrated neither its required ability to pay the offered job's proffered wage nor the Beneficiary's qualifying experience for the job. On appeal, the company contends that SCOPS overlooked evidence.

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 agree with SCOPS that the company omitted regulatorily required evidence of its ability to pay the proffered wage and the Beneficiary's qualifying experience. We will therefore dismiss the appeal.

I. LAW

Immigration as a skilled 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 the offered job; and an alien's employment in the job would not harm wages or working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

Second, a prospective employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* 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. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B).

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. ANALYSIS

A. Ability to Pay

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.*

When determining ability to pay, USCIS examines whether a petitioner annually paid a beneficiary the full proffered wage, starting 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 cover any differences between the proffered wage and 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).[1]

The Petitioner's labor certification states the proffered wage of the offered line cook job as $36,005 a year. The petition's priority date is December 6, 2019, 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 Beneficiary attested on the labor certification that she began working for the Petitioner in the offered job in May 2016. The Petitioner submitted copies of her IRS Forms W-2, Wage and Tax Statements, for 2019 through 2022 and her bi-monthly earnings statements from November 2020 through January 2021. The Beneficiary's 2019 Form W-2 indicates her receipt that year of $46,904.48, above the annual proffered wage of $36,005.

But the Forms W-2 and earnings statements bear the name of a limited liability company (LLC) with a different name and federal employment identification number than the petitioning LLC. The Petitioner identifies the other LLC as its sole member/parent company. On appeal, it argues that, because the two LLCs have an "affiliation/common control/common ownership," the other LLC's payments to the Beneficiary demonstrate the Petitioner's ability to pay the proffered wage.

Legal entities, however, exist separately from each other and their owners. *Matter of Silver Dragon Chinese Rest.*, 19 I&N Dec. 401, 403 (Comm'r 1986). Under USCIS policy:

[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).

> 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.

6 *USCIS Policy Manual* E.4(B) (emphasis added). Thus, the other LLC's payments to the Beneficiary do not establish the Petitioner's ability to pay the proffered wage.

The Petitioner also submitted copies of its "operating statements" from 2019 through 2022. These statements do not show the company's net current assets. But they indicate that the company generated sufficient net income amounts in 2019 ($686,972), 2021 ($826,029), and 2022 ($269,389) to pay the $36,005 annual proffered wage.[2]

The unaudited operating statements, however, are not regulatorily required evidence of the Petitioner's ability to pay. Contrary to the applicable regulation, the company did not submit copies of its annual reports, federal tax returns, or audited financial statements for any of the relevant years. *See* 8 C.F.R. § 204.5(g)(2) ("Evidence of this ability [to pay the proffered wage] *shall be* either in the form of copies of annual reports, federal tax returns, or audited financial statements.") (emphasis added). Thus, the operating statements alone do not establish the Petitioner's ability to pay.

On appeal, the Petitioner submits additional copies of the Beneficiary's Forms W-2 for 2016, 2017, and 2018. The record, however, shows that SCOPS' RFE provided the company with an opportunity to submit additional evidence of its ability to pay before the petition's denial. The Petitioner does not assert the evidence's unavailability at the time of the RFE response deadline. We therefore decline to consider the additional materials on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal where a petitioner received notice of the required materials and a reasonable opportunity to provide them).

Also, even if we considered the new materials, they would not establish the Petitioner's ability to pay the proffered wage. The Forms W-2 predate the petition's 2019 priority date. They therefore would not establish the company's ability to pay from the priority date onward. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence").

For the foregoing reasons, the Petitioner has not demonstrated its continuing ability to pay the offered job's proffered wage from the petition's priority date onward. We will therefore affirm the petitioner's denial on this ground.

[2] The Petitioner also submitted copies of its operating statements for 2023 and 2024. But these statements are incomplete. The 2024 statement indicates that it covers only from September 30, 2024 to October 27, 2024. The 2023 statement omits the company's net income.

B. Qualifying Experience

A petitioner must also demonstrate that a beneficiary met all DOL-certified requirements of an offered job by a petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). As previously indicated, this petition's priority date is December 6, 2019.

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a job's minimum requirements. USCIS may neither ignore a labor certification term nor impose unstated requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *contents* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum requirements of the offered line cook job as two years' experience in the job offered. The labor certification requires neither education nor training for the job. Also, part H.14 of the labor certification, "Special skills and other requirements," states that a "[c]andidate [for the job] must have excellent communication skills."

On the labor certification application, the Beneficiary attested that, by the petition's priority date, she gained more than seven years of full-time qualifying experience in the United States. She stated that she worked:

- About three years, seven months in the offered job for the Petitioner, from May 2016 until the labor certification application's filing in December 2019;
- About three years, eight months as a head cook for a rest home, from November 2009 to July 2013; and
- About two months as a "prep/cook" for a restaurant, from September 2009 to November 2009.

To demonstrate a beneficiary's claimed qualifying experience, a petitioner must submit letters from the alien's current or former employers. 8 C.F.R. § 204.5(l)(3)(2)(ii)(A). The letters must state an employer's name, address, and title, and describe a beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the beneficiary's experience ... will be considered." 8 C.F.R. § 204.5(g)(1).

As proof of the Beneficiary's employment by the rest home, the Petitioner submitted a letter from the Beneficiary and copies of her resume, two Forms W-2 from 2010 and 2012, and earning statements from one bi-weekly period in February 2010 and one bi-weekly period in July 2013.

As SCOPS found, these materials do not meet the regulatory requirement, as they do not include a letter from the rest home. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) ("Any requirements of ... experience for skilled workers ... *must* be supported by letters from ... employers.") (emphasis added). Also, the Petitioner neither demonstrated nor asserted unavailability of a letter from the rest home. In her letter, the Beneficiary stated that, shortly after she left the rest home's employment, a former colleague told her that the facility had changed owners. The Beneficiary stated: "[S]ince that I had no more contact [with] them." But the Petitioner did not submit any evidence that it or the Beneficiary tried to obtain a letter from the rest home's former or current owner regarding her claimed qualifying experience.

See 8 C.F.R. § 204.5(g)(1) (stating that USCIS will consider other evidence of a beneficiary's experience "[i]f such evidence is unavailable").

On appeal, the Petitioner submits copies of additional 2013 earnings statements from the rest home and a letter from a purported former employer of the Beneficiary in Brazil. SCOPS' RFE, however, provided the company with an opportunity to submit additional evidence of the Beneficiary's qualifying experience before the petition's denial. The Petitioner does not assert the additional materials' unavailability at the time of the RFE response's deadline. We therefore decline to consider the additional materials on appeal. *See Matter of Furtado*, 28 I&N Dec. at 801-02.

Also, even if we considered the additional evidence, it would not establish the Beneficiary's qualifying experience for the offered job. The letter from the Brazilian restaurant states its full-time employment of the Beneficiary as a cook from July 1997 to October 1999. But, contrary to the applicable regulation, the letter does not describe the Beneficiary's purported experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring letters from employers to contain "a description of ... the experience of the alien"). Also, the Beneficiary omitted the purported qualifying experience from the accompanying labor certification, casting doubt on the employment's veracity and requiring additional independent corroborating evidence of the employment. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976), *disapproved of on other grounds by Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (declining to credit testimony of qualifying experience by an adjustment of status applicant who omitted the purported employment from his underlying labor certification application).

The additional 2013 earnings statements appear to document the rest home's continuous employment of the Beneficiary from at least January 2013 to July 2013. But the Petitioner has still not submitted a required letter from the employer or established a letter's unavailability. Thus, the additional evidence would not have documented the Beneficiary's qualifying experience for the offered job.

On appeal, the Petitioner also provided a letter from its vice president of human resources, indicating the company's employment of the Beneficiary in the offered job for several years. The letter states that she "has had many working experiences as a Line Cook work for [the Petitioner] since May 2016 and has further met the requirements for the position of Line Cook."

Employers, however, cannot rely on experience that aliens gained with them, unless the aliens gained the experience in jobs substantially different than the offered ones or the employers can demonstrate the impracticality of training U.S. workers for the offered jobs. 20 C.F.R. § 656.17(i)(3). Here, the Petitioner has established neither that the Beneficiary gained experience with it in a job substantially different than the offered one nor the impracticality of training a U.S. worker for the job. Thus, the Petitioner would not be able to rely on the experience that the Beneficiary gained with it.

The Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered job. We will therefore affirm the petition's denial on this additional ground.

III. CONCLUSION

The Petitioner did not submit regulatorily required evidence of its ability to pay the proffered wage or the Beneficiary's qualifying experience for the offered job. 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 would 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.