U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43493831

Date: JULY 13, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a church, seeks to employ the Beneficiary as director of religious activities. The church requests his 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). Organizations may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years' training or experience. *Id.*

U.S. Citizenship and Immigration Services (USCIS) denied the petition. The Acting Associate Director of Service Center Operations concluded that the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, the church submits additional evidence of its ability to pay and contends that the Director neglected to consider a totality of the circumstances.

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, without regulatory required evidence, the church has not established its ability to pay the proffered wage. 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)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, a prospective employer must submit a DOL-approved labor certification with an immigrant visa petition to 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 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 a petitioner's annual reports, federal tax returns, or audited financial statements. *Id.*; *see generally* 6 *USCIS Policy Manual* E.4(A), www.uscis.gov/policy-manual ("[T]he petition must include copies of the petitioner's annual reports, federal tax returns, or audited financial statements for each available year from the priority date.")[1]

The Petitioner's labor certification states the proffered wage of the offered job of director of religious activities as $41,517 a year. The petition's priority date is December 21, 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 submitted various materials to demonstrate its purported ability to pay the proffered wage in 2023, 2024, and 2025. The materials, however, do not include any regulatory required evidence. *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.")

The Petitioner submitted copies of financial statements for the relevant years. But, as the Director found, the statements indicate that they are not audited. The statements therefore do not constitute regulatory required evidence. *See* 8 C.F.R. § 204.5(g)(2) (requiring "copies of annual reports, federal tax returns, or *audited* financial statements") (emphasis added).

On appeal, the Petitioner argues that, as a tax-exempt nonprofit organization, it does not file income tax returns. *See generally* 6 *USCIS Policy Manual* E.4(D)(4) (stating that churches and certain church-related organizations are not required to file income tax returns or IRS Forms 990, Returns of Organizations Exempt from Income Tax). The church contends: "[I]n the absence of tax return filings, [its] ability to provide official financial documents is limited and therefore [it] must rely on secondary forms of evidence to establish the ability to pay."

The Petitioner's nonprofit, tax-exempt status, however, does not relieve it of the obligation to submit regulatory required evidence of its ability to pay the proffered wage. "If a nonprofit organization does not have tax returns, it must still provide annual reports, audited financial statements, or, for organizations with 100 or more employees, a financial officer statement, to establish its ability to pay the proffered wage." 6 *USCIS Policy Manual* E.4(D)(4); *see also Ukrainian Autocephalous Orthodox Church v. Chertoff*, 630 F. Supp. 2d 779, 788 (E.D. Mich. 2009) (noting that the petitioning church "did

[1] If a prospective U.S. employer has at least 100 employees, USCIS may accept a statement from a financial officer of the employer in lieu of the normal regulatory required evidence. 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(A). Here, the Petitioner does not claim to employ at least 100 people.

not submit any of the types of evidence required by 8 C.F.R. § 204.5(g)(2), *i.e.,* copies of annual reports, federal tax returns, or audited financial statements"); *Avena v. INS* [the former Immigration and Naturalization Service], 989 F. Supp. 1, 7 (D.D.C. 1997) (affirming INS's determination that a church had to submit regulatory required evidence of its ability to pay a religious worker). Thus, contrary to the Petitioner's argument, the church may not rely on secondary evidence, alone, to demonstrate its ability to pay.

The Petitioner contends that the Director erred by not considering the church's ability to pay the proffered wage under a totality of the circumstances. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967) (holding that, even if a petitioner did not demonstrate its ability to pay in a relevant year, the immigration service may consider other evidence of the organization's financial strength); *see generally* 6 *USCIS Policy Manual* E.4(C).

But, because the Petitioner omitted regulatory required evidence, the Director did not have to otherwise consider its ability to pay the proffered wage. Without required evidence, the church cannot demonstrate its ability to pay. *See* 8 C.F.R. § 204.5(g)(2) ("Evidence of this ability [to pay] *shall be* either in the form of copies of annual reports, federal tax returns, or audited financial statements." (emphasis added); *see also* 6 *USCIS Policy Manual* E.4(A) ("The only exception to this requirement is if a U.S. employer employs 100 or more workers, it may instead include a financial officer statement.") Because the Petitioner does not employ at least 100 workers, its evidence had to include one of the regulatory designated materials for each applicable year. Without regulatory required materials, the church's evidence could not establish its ability to pay in any year. The Director therefore did not have to consider the church's other evidence.

The Petitioner's remaining arguments concern its previously submitted evidence and its new materials, which do not include any regulatory required evidence. Because the church omitted regulatory required evidence, it cannot demonstrate its ability to pay the proffered wage, and we need not consider its remaining arguments.

B. The Beneficiary's Qualifying Experience

Although unaddressed by the Director, the Petitioner also has not demonstrated the Beneficiary's qualifying experience for the offered job.

A petitioner must demonstrate a beneficiary's possession of all DOL-certified requirements of an offered job by a petition's priority date. *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 21, 2023.

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

The job-offer section of the Petitioner's labor certification refers to job requirements listed on the company's previously filed application for prevailing wage determination (PWD).[2] The PWD states that the offered job of director of religious activities requires an associate's degree in divinity or political science and three months of experience as a director of religious activities or an assistant pastor.

Although the Petitioner indicated on the labor certification that it was not "relying solely on the experience the foreign worker gained while working for the employer," the record demonstrates that the Petitioner sought to prove the Beneficiary's qualifying experience based solely on his prior work at the church. The only qualifying experience the Beneficiary attested to on the labor certification was his experience as an assistant pastor at the church from November 2020 to December 2023. And the only evidence of his qualifying experience was a letter from the church, confirming his full-time experience as an assistant pastor during the stated period. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring petitioners to demonstrate qualifying experience with letters from a beneficiary's employer(s)).

A labor certification employer, however, cannot generally rely on experience that an alien gained with it. *See* 20 C.F.R. § 656.17(i)(3)(i). To rely on such experience, an employer has two options. Under the first option, the alien must have gained the experience while working for the employer "in a position not substantially comparable to the position for which certification is being sought." *Id.* "A 'substantially comparable' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time." 20 C.F.R. § 656.17(i)(5)(ii); *see also Border States Indus., Inc. v. USCIS*, 751 F. Supp. 3d 956, 967 (D. Neb. 2024) (finding that an alien's prior experience with a labor certification employer in the same job as the offered one barred the employer's reliance on the experience). Thus, to rely on the Beneficiary's experience with it under the first option, the church must demonstrate that his prior assistant pastor job required performance of the same duties as the offered job *less* than 50 percent of the time.

Under the second option, the employer must demonstrate that it is no longer feasible to train a U.S. worker to qualify for the offered job. 20 C.F.R. § 656.17(i)(3)(ii).

Here, the Petitioner did not seek to demonstrate either option. The record appears to show that the offered job and the Beneficiary's prior job share many of the same duties. The PWD states that the offered job involves representing the church's senior pastor "at committee, board, and ministry team meetings." Similarly, the church's letter states that, as assistant pastor, the Beneficiary "represent[ed] the Senior Pastor at committee and ministry team meetings as requested." The PWD states that the offered job involves acting as a liaison between various church committees and the congregation. The letter similarly states that, as assistant pastor, the Beneficiary "serve[d] as an effective liaison to church committees and team ministry efforts." The PWD states that the offered job involves assisting the senior pastor in developing and guiding religious curricula for men's, family, and children's education. The letter states that, as assistant pastor, the Beneficiary "prepare[d] and conduct[ed] men's bible study meeting, [and] prepare[d] lesson plans for the family bible study and youth meetings." The PWD

[2] Effective June 1, 2023, DOL required petitioners to electronically file permanent labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089. DOL no longer uses Form ETA-9089 to collect information about the minimum requirements of the job opportunity. Instead, employers now provide that information on the Application for Prevailing Wage Determination (Form ETA-9141). *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual.

states that the offered job involves "oversee[ing] and participat[ing] in ministry counseling needs from the church membership and requests from the community." The letter states that, as assistant pastor, the Beneficiary "overs[aw] all ministry counseling needs from church members and requests from the community," "join[ed] the Senior Pastor for counseling (premarital, teen, family, and youth counseling)," and "provide[d] individual counseling for Church members."

The record, however, does not indicate how much time the Beneficiary, as assistant pastor, spent on the shared duties. We therefore cannot determine whether he spent less than 50 percent of his time on the common duties and, thus, whether, under the first option, the Petitioner can rely on the experience he gained with it.

The Director did not notify the Petitioner of the evidentiary defect regarding the Beneficiary's claimed qualifying experience for the offered job. We therefore do not base our decision on this issue. In any future filings in this matter, however, the church must demonstrate that, under one of the two options, it can rely on the experience that the Beneficiary gained with it.

III. CONCLUSION

In the absence of regulatory required evidence, the Petitioner has not demonstrated its ability to pay the proffered wage. 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 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.