U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32262560

Date: JULY 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accounting firm, seeks to employ the Beneficiary as a staff accountant. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Businesses may sponsor noncitizens for permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, the company contends that the Director disregarded evidence of its ability to pay.

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 the company has not demonstrated its ability to pay the offered job's proffered wage. We will therefore dismiss the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and a noncitizen's 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 an 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); 8 C.F.R. § 204.5(l)(3)(i). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(C).

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 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 Petitioner's labor certification states the proffered wage of the staff accountant job as $59,946 a year. The petition's priority date is June 14, 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).

At the time of the appeal's filing, regulatory required evidence of the Petitioner's ability to pay the proffered wage in 2023 was not yet available. Thus, for purposes of this decision, we will consider the company's ability to pay only in 2021, the year of the petition's priority date, and 2022.[3]

The Petitioner has not submitted evidence that it employed the Beneficiary. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

The Petitioner provided copies of its federal income tax returns for 2021 and 2022. The 2021 return reflects net income of -$1,771 and net current assets of $20,139. Neither amount meets nor exceeds the annual proffered wage of $59,946. The tax return therefore does not establish the Petitioner's ability to pay in 2021.
The Petitioner's 2022 federal income tax return reflects net income of $2,637. Contrary to the form's instructions, the company did not complete the balance sheet at Schedule L of the business's IRS Form

[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).
[3] In any future filings in this matter, the Petitioner must submit required evidence of its ability to pay the proffered wage in 2023 and, if available, 2024. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay a proffered wage "continuing until the beneficiary obtains lawful permanent residence").

1120, U.S. Corporation Income Tax Return. The return therefore does not demonstrate the Petitioner's ability to pay the proffered in 2022.

Thus, based on a review of wages paid, net income, and net current assets, the Petitioner has not demonstrated its ability to pay the proffered wage in 2021 or 2022.

We agree with the Petitioner that the Director should have considered other factors potentially affecting the company's ability to pay the proffered wage. Under *Sonegawa*, USCIS may consider factors such as: the number of years the Petitioner has conducted business; its number of employees; any business growth; its business reputation; its incurrence of any uncharacteristic losses or expenses; the Beneficiary's replacement of another employee or outsourced service; or other potential factors. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15; *see also* 6 *USCIS Policy Manual* E.(4)(C)(3).

The record indicates that the Petitioner began operations in 1997 and, at the time of the petition's filing in April 2022, employed four people. Unlike the petitioner in *Sonegawa*, the company has not established its possession of a good business reputation or its incurrence of uncharacteristic losses or expenses during the relevant years. The company also has not established the Beneficiary's replacement of an employee or outsourced service.

The Petitioner, however, notes its business growth over the last few years. Its tax returns show that its gross annual sales have grown from $365,025 in 2020 to $547,647 in 2022, a 50% increase. The company states: "Clearly, this extraordinary growth shows the employer's ability to pay the proffered wage."

Over the same period, however, the Petitioner's tax returns do not show a commensurate growth in the company's annual amounts of net income or net current assets. The company's federal income tax return for 2020 also reflects insufficient amounts of net income (-$12,112) and net current assets ($6,549) to pay the offered job's annual proffered wage. Thus, the Petitioner's revenue growth from 2020 through 2022 does not demonstrate the company's ability to pay the proffered wage.

Quoting USCIS policy, the Petitioner notes that:

> [s]ometimes companies operate at a loss for a period to improve their business position in the long run. For example, a company may not expect research and development costs on a product line to generate revenue for several years. In those instances, the documentation should fully explain the sources of funding for the entity (or unit) and the expected profit potential. Whether the petitioner can demonstrate it has the ability to pay the beneficiary the wages described in the petition depends on the specific facts presented and consideration of all of the circumstances.

6 *USCIS Policy Manual* E.(4)(C)(3).

The Petitioner states that it is expanding its business by raising fees for its services and securing new clients. It submitted copies of recent contracts it signed with new and existing customers.

The record demonstrates that the Petitioner's revenues have increased. But, contrary to USCIS policy, the company has not "fully explained" "the expected profit potential." *See* 6 *USCIS Policy Manual* E.(4)(C)(3). The Petitioner has documented its increasing revenues. But it has not disclosed whether its increased business will also increase its costs or explained how the additional revenue will lead to additional funds to pay the proffered wage. Thus, consideration of the totality of the circumstances under *Sonegawa* does not demonstrate the Petitioner's ability to pay the proffered wage.

III. CONCLUSION

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

ORDER: The appeal is dismissed.