U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43343821

Date: JUNE 22, 2026

Appeal of USCIS Decision

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

The Petitioner, an operator of assisted living facilities for elderly patients, seeks to employ the Beneficiary as a home care aide. The company requests her classification under the employment-based, third-preference 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' training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

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 company contends that the Director misstated the denial ground, overlooked evidence, and disregarded 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 the Director's errors were harmless and that a totality of the circumstances does not establish the company's continuing ability to pay the 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: (1) insufficient U.S. workers are able, willing, qualified, and available for an offered job; and (2) an alien's employment in the job would not harm wages and 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, an 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). USCIS determines, among other things, 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(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

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 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]

When determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year, starting with the year of a petition's priority date. *See generally* 6 *USCIS Policy Manual* E.4(C)(1). If a petitioner did not annually pay the full proffered wage or did not pay a beneficiary at all, the Agency considers whether the business generated annual amounts of net income or net current assets sufficient to pay any differences between the proffered wage 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 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 offered home care aide job as $33,196.80 a year. The petition's priority date is August 24, 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).

At the time of the petition's denial in March 2026, regulatory required evidence of the Petitioner's ability to pay the proffered wage in 2025 was not yet available. Thus, for purposes of this decision, we will consider the company's ability to pay only in 2023, the year of the petition's priority date, and 2024. *See* 6 *USCIS Policy Manual* E.4(A) (requiring a petitioner to submit copies of annual reports, federal tax returns, or audited financial statements "for each *available* year from the priority date.") (emphasis added).[3]

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[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 100 people.

[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); *Décor Team LLC v. McAleenan*, 520 F.Supp.3d 1212, 1223-25 (D. Ariz. 2021).

[3] In any future filings in this matter, the Petitioner must submit regulatory required evidence of its ability to pay the proffered wage in 2025 or demonstrate the evidence's unavailability. *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").

The labor certification does not indicate the Petitioner's employment of the Beneficiary. Nor did the company submit any evidence that it has paid her. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

The Petitioner submitted copies of its federal income tax returns for 2023 and 2024. The 2023 return reflects net income of $237,206 and net current assets of $413,675. Both amounts exceed the annual proffered wage of $33,196.80. Thus, as the Director found, the company demonstrated its ability to pay the proffered wage in 2023, the year of the petition's priority date.

The Petitioner's 2024 tax return reflects net income of $22,940 and net current assets of $3,545. Neither amount equals or exceeds the annual proffered wage of $33,196.80. Thus, based on examinations of wages paid, net income, and net current assets, the company has not demonstrated its ability to pay the proffered wage in 2024.

On appeal, the Petitioner contends that the Director misstated the denial ground. The Director's request for additional evidence (RFE) questioned the company's ability to pay the proffered wage. But the decision concludes: "Since the evidence does not establish that the beneficiary met the minimum requirements for the position as of [the] August 24, 2023 [priority date], the beneficiary does not qualify for the position and the regulatory requirements for the classification." The Petitioner states:

> The denial ... rests on an internally inconsistent and legally deficient rationale: it announces one ground of denial while substantively adjudicating another. ... A decision that announces a beneficiary-qualification denial while actually discussing only ability to pay is not a reasoned adjudication of the petition before the agency.

When USCIS denies a benefit request, "the officer shall explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i). As the Petitioner argues, the conclusion of the Director's decision appears to deny the petition because the Beneficiary purportedly did not meet the offered job's minimum requirements. Yet the Director's RFE and decision detailed purported deficiencies in the company's ability-to-pay evidence and made no specific findings regarding the Beneficiary's qualifications for the offered job. The Director's decision clearly discusses the ways in which a Petitioner can establish its ability to pay. The decision then lists the ability to pay evidence that the Petitioner submitted, and considers the Petitioner's net income, and net current assets from its federal tax returns. And the decision further states, "Therefore, neither the ordinary business income or the net current assets for 2024 establish the petitioner's ability to pay the offered wage of $33,196 for the year 2024," making the basis for the petition's denial clear.

Also, the Petitioner's appellate challenges to the Director's ability-to-pay findings indicate that the company interpreted the denial as based on ability to pay. As the decision's conclusory statements regarding the Beneficiary's job qualifications did not hinder the company from contesting the Director's ability-to-pay findings, the statements are harmless. *See Kazarian v. USCIS*, 596 F.3d 1115, 1122 (9th Cir. 2010) (citation omitted) (stating that an agency's error is harmless if it "clearly had no bearing" on either "the procedure used or the substance of decision reached"); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). We therefore decline to reverse the decision or remand the matter on this basis.

The Petitioner notes that the Director also discounted an unaudited balance sheet that the company submitted for 2024. The Director stated: "The regulation at 8 C.F.R. [§] 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited."

The regulation requires a petitioner to submit copies of annual reports, federal tax returns, or audited financial statements for a relevant year. 8 C.F.R. § 204.5(g)(2). The Petitioner satisfied the regulation for 2024 by submitting copies of the company's 2024 federal income tax return. The regulation allows a petitioner in "appropriate cases" to submit "additional evidence." 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(B) ("Ultimately, USCIS considers all evidence relevant to the petitioner's financial strength and the significance of its business activities, whether listed in the regulation or related to other metrics.") Thus, the Director should have considered the unaudited balance sheet for 2024 as additional evidence. But the company has not shown how the unaudited balance sheet establishes its ability to pay the proffered wage in 2024.

The Petitioner argues that the balance sheet shows that the Director understated the company's net current assets in 2024. Both the company's 2024 federal income tax return and the 2024 unaudited balance sheet refer to $397,484 in loans receivable. The tax return, however, classifies only $30,000 of that amount as net current assets, while the unaudited balance sheet lists the entire amount of $397,484 as net current assets. A certification from the Petitioner's president/sole shareholder accompanies the balance sheet, stating that the financial document truly and accurately represents the company's official records.

Despite the certification from the Petitioner's owner, however, the company's 2024 tax return – which indicates its preparation by an independent accountant and which the company submitted to the U.S. Internal Revenue Service (IRS) under penalties of perjury – more reliably states the company's financial information than the unaudited balance sheet. Also, under U.S. generally accepted accounting principles, loans receivable are current assets only if the loans are scheduled to be repaid within one year; otherwise, they are non-current assets. *See, e.g.,* Steven Bragg, *Accounting Tools*, "Loans receivable definition," (Jan. 28, 2026), www.accountingtools.com/articles/loans-receivable. The Petitioner has not demonstrated that it expected borrowers to repay all the 2024 loan receivables within one year or explained why the company's unaudited balance sheet treats the loans differently than its 2024 tax return. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). The unaudited balance sheet therefore does not establish the company's ability to pay in 2024, and the Director's discounting of the document was harmless. *See Kazarian*, 596 F.3d at 1122; *Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

As previously indicated and as the Petitioner argues, USCIS may consider additional factors potentially affecting the company's ability to pay the proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15; *see generally* 6 *USCIS Policy Manual* E.4(C)(3). For example, USCIS may consider: the number of years the company has conducted business; historical growth of its business; occurrences of uncharacteristic business expenditures or losses from which it has since recovered; and its reputation in its industry. *Id.*

The Petitioner's financial situation is similar to that of the petitioner in *Sonegawa*. Both companies conducted business for more than 10 years, and the records show that each experienced only one year in which they could not establish an ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. at 614. But unlike the petitioner in *Sonegawa*, the Petitioner here has not demonstrated that its inability to pay stemmed from uncharacteristic business expenditures or losses. *Id.* (explaining that, during the year of the business's relocation, it paid "double rent" for five months, incurred moving costs, and could not conduct regular business for a "period"). Rather, the Petitioner has not provided any explanation for its inability to pay in 2024.

Also, the dress shop in *Sonegawa* demonstrated that major U.S. magazines and fashion publications had featured its dresses and that it designed gowns for most of the contestants in the Miss Universe beauty pageant, movie actresses, and society matrons. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15. In contrast, the Petitioner has not established that it has a similarly good reputation in its field. Thus, the record indicates that the Petitioner is not as financially strong as the petitioner in *Sonegawa*. *See Taiyang Foods Inc. v. USCIS*, No. C10-0109JLR, 2010 WL 3732193, at *4 (W.D. Wash. Sept. 20, 2010), *aff'd*, 444 F. App'x 115 (9th Cir. 2011) ("The fact that USCIS declined to make an exception [under *Sonegawa*] ... does not evidence an abuse of the agency's discretion.")

The Petitioner submitted evidence that its president/sole shareholder has established other businesses in the healthcare field. The company argues that "the totality of her business activities reflects a clear indication of financial confidence and long-term viability, ensuring that the Petitioner will maintain the financial ability to pay the proffered wage."

But, under 8 C.F.R. § 204.5(g)(2), "the prospective United States employer" must demonstrate its ability to pay. Thus, we must examine the finances of the Petitioner, not its owner. *See Matter of Aphrodite Invs. Ltd.*, 17 I&N Dec. 530, 531 (Comm'r 1980) (stating that a "corporation has a separate legal entity from its owners or even its sole owner"). The regulation does not require us to consider the financial resources of a person with no legal duty to pay the proffered wage. *See Sitar Rest. v. Ashcroft*, No. CIV.A.02-30197-MAP, 2003 WL 22203713, at *2 (D. Mass. Sept. 18, 2003); *see generally* 6 *USCIS Policy Manual* E.4(B) ("Generally, USCIS does not consider the financial resources of persons or entities that have no explicit legal obligation to pay the proffered wage.") Thus, the business activities of the Petitioner's owner do not establish the company's ability to pay the proffered wage.

III. CONCLUSION

A totality of the circumstances does not demonstrate the Petitioner's 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.