U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43304063

Date: JUN. 29, 2026

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

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

The Petitioner, a hard surface design and fabrication business, seeks to employ the Beneficiary as a project manager in stone manufacturing. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

USCIS denied the petition, concluding that the Petitioner did not establish that it had the continuing ability to pay the proffered wage of the offered job. The matter is now before us on appeal pursuant to 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 dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (Form ETA-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 national 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 USCIS. *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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. Petitioners that employ at least 100 people may submit statements from financial officers to demonstrate the businesses' ability to pay proffered wages. *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 id.* at 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, supra*, at E.(4)(C)(3).[1]

The Form ETA-9089 states the proffered wage of project manager as $100,000 per year. The petition's priority date is April 23, 2024, 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 did not submit 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.

The Petitioner stated that it was established in 2009. On the Form I-140 petition, filed on October 29, 2025, the Petitioner stated that it has 14 employees.

The record includes the Petitioner's Internal Revenue Service (IRS) Form 1120-S, U.S. Income Tax Return for an S Corporation, for 2021 through 2024. The tax returns reflect the following amounts:

Year	Net Income[2]	Net Current Assets
2021	$79,594	-$113,944
2022	$409,121	$90,349
2023	$446,098	$161,314
2024	-$191,278	-$410,469

[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); *Four Holes Land & Cattle, LLC v. Rodriguez*, No. 5:15-cv-03858, 2016 WL 4708715, **4-5 (D.S.C. Sep. 9, 2016).

[2] The Petitioner's tax returns indicate that it is a limited liability company taxed as an S Corporation. If an S corporation, like the Petitioner, has income exclusively from a trade or business, USCIS considers its net income (or loss) to be the figure for "Ordinary business income (loss)" on page 1, line 21, of the Internal Revenue Service (IRS) Form 1120S. However, if there are relevant entries for additional income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K of the IRS Form 1120S, and the corporation's net income or loss will be found in line 18 of Schedule K ("Income/loss reconciliation"). Net current assets are the difference between a petitioner's current assets and current liabilities.

USCIS issued a request for evidence (RFE), noting that the Petitioner's 2024 tax return reflected insufficient net income and net current assets to establish its ability to pay the proffered wage. In response to the RFE, the Petitioner submitted its IRS Forms 941, Quarterly Federal Tax Return, for 2024 and 2025, its unaudited balance sheets and profit and loss statements for 2021 to 2024, and bank statements for February 2024 to December 2025.

The Petitioner also provided a letter from its president, attesting to its ability to pay the Beneficiary the proffered wage. The Petitioner's president stated, "Our company has had very strong financials for the past 11 years. It has only been in the past year and a half that economic challenges have taken a toll. However … we have solid work on the books for the year ahead and many bids on further work." The Petitioner's president also stated that it expected the employment of the Beneficiary "to increase revenue well beyond her salary requirement."

USCIS denied the petition, concluding that the Petitioner did not establish its ability to pay the proffered wage from the 2024 priority date. USCIS noted that the Petitioner's tax returns reflect negative net income and net current assets in 2024, which is below the proffered wage. USCIS also declined to consider the quarterly tax returns, unaudited balance sheets, and bank statements as "secondary evidence."

On appeal, the Petitioner asserts that USCIS failed to consider the totality of the circumstances in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612, 614-15. The Petitioner relies on evidence already in the record. On appeal, it states, "Given [its] strong financial position, cash flow, and ability to consistently meet payroll needs, [the Petitioner] has shown that despite an anomalous 2024, the company has consistently shown financial strength and health and recovered for 2025 and beyond."

As noted above, USCIS may also consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *Id.* 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. *Id.*; *see also* 6 *USCIS Policy Manual, supra,* at E.(4)(C)(3).

The record indicates that the Petitioner was established in 2009. The IRS Forms 941 demonstrate that the Petitioner employed between 13 and 19 employees in 2024 and 2025 and paid consistent wages. While we acknowledge the Petitioner's balance sheets and profit and loss statements in the record, as USCIS noted in the decision, these statements are unaudited. Where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, the financial statements must be audited. *See id.* at E.(4)(A)(3). As there is no accountant's report accompanying these statements, we cannot conclude that they are audited statements. Unaudited financial statements are the unsupported representations of management. The unsupported representations of management are not persuasive evidence and are insufficient to demonstrate the Petitioner's ability to pay the proffered wage.

The Petitioner notes that its 2025 profit and loss statement reflects net income of $355,825. However, as noted above, this statement is unaudited and the record does not include other evidence, such as the

Petitioner's 2025 tax return, to corroborate this figure. Further, the Petitioner does not explain why the net income reported on its unaudited profit and loss statements differs from the net income amounts reported on its tax returns from 2021 to 2024. For example, in 2021 the Petitioner reported net income of $79,594 on its tax return, but the profit and loss statement shows $405,008.63. In 2024 the Petitioner reported net income of -$191,278 on its tax return, but the profit and loss statement shows -$483,331.45. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

While we also acknowledge the Petitioner's bank statements in the record, "bank statements show the amount in an account on a given date and do not identify if any funds may already be obligated for other purposes." *Id.* at E.(4)(B). Here, the bank statements do not reflect a balance above the monthly proffered wage ($8,333 per month) in each month since the priority date. For example, the ending balance in April and May 2025 is -$3,982.48 and -$328.99, which is below the monthly proffered wage. Further, the Petitioner has not established that the amounts reported on the bank statements have not already been considered elsewhere, such as in the calculation of its net current assets. *See id.*

Although the Petitioner references the historical growth of its business and "strong financials for the past 11 years," four years of tax returns are insufficient to demonstrate this. The record does not include evidence of the Petitioner's business reputation in its industry. Nor does the record include evidence to corroborate the Petitioner's claim to have had scheduled work and bids for 2025 and beyond. With respect to the incurrence of uncharacteristic expenses or losses that prevented the Petitioner's ability to pay the proffered wage in any year, the Petitioner references 2024 as an "anomalous year." However, the record does not include an explanation from the Petitioner or its officers of why 2024 was not profitable or uncharacteristic.

Thus, based on a totality of the circumstances under *Sonegawa*, the Petitioner has not demonstrated its continuing ability to pay the proffered wage from the petition's priority date onward.

The record therefore does not establish the Petitioner's ability to pay the proffered wage "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence." *See* 8 C.F.R. § 204.5(g)(2).

III. CONCLUSION

The Petitioner has not established its required ability to pay the offered job's proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). 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.