U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41213923

Date: MAR. 3, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a skilled nursing facility, seeks to employ the Beneficiary as a nursing assistant. It requests classification of the Beneficiary under the third-preference, immigrant category as an unskilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based category allows a U.S. business to sponsor an alien for lawful permanent resident status based on a job offer requiring less than two years of training or experience.

Service Center Operations (SCOPS) 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 (ETA Form 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 worker 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 U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the alien 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.*

The regulation at 8 C.F.R. § 204.5(g)(2) provides that USCIS "*may* accept a statement from a financial officer" of an employer with 100 or more workers and/or additional evidence such as profit/loss statements, bank account records or personnel records as evidence of a petitioner's ability to pay the proffered wage. The regulations do not compel USCIS to accept such evidence or explicitly exempt all employers with more than 100 workers from submitting annual reports, tax returns or audited financial statements in all cases. In certain circumstances, a statement from a financial officer alone may be insufficient to establish ability to pay, including: where a petitioner has filed petitions on behalf of multiple beneficiaries; where evidence in the record reflects that the petitioner may have fewer than 100 employees; and where the information in the statement is inconsistent with other evidence in the record. *See* 6 *USCIS Policy Manual* E.(4)(A)(4), www.uscis.gov/policy-manual.

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), *supra*. 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).[1]

The ETA Form 9089 states the proffered wage of nursing assistant as $30,285 per year. The petition states that the offered wage is $20.00 per hour. The petition's priority date is February 15, 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 has not submitted 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 states that it was established in 1969. On the ETA Form 9089, the Petitioner stated that it had 84 employees. On the Form I-140 petition, filed on September 19, 2024, the Petitioner stated that it had 137 employees.

[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).

With the initial filing, the Petitioner provided a letter from its chief clinical officer, attesting to its ability to pay the Beneficiary the proffered wage. SCOPS issued a request for evidence (RFE), noting that the letter from the chief clinical officer was insufficient, as it was not from a financial officer of the organization. In the RFE, SCOPS allowed the Petitioner an opportunity to submit required initial evidence of its ability to pay the proffered wage, including a statement from a *financial officer* of the Petitioner, or a complete copy of the Petitioner's 2023 annual reports, audited financial statements, or federal income tax returns with all accompanying schedules.

In response to the RFE, the Petitioner submitted its 2023 state tax return, and copies of Internal Revenue Service (IRS) Form 941, Quarterly Federal Return, for 2023, 2024, and the first quarter of 2025. The IRS Forms 941 indicate that the Petitioner did not have 100 or more employees consistently from 2023 to 2025. In the first quarter of 2023, when the ETA Form 9089 was filed, the Petitioner claimed 88 employees on the IRS Form 941. In the third quarter of 2024, when the Form I-140 petition was filed, the Petitioner claimed 87 employees on the IRS Form 941. In the first quarter of 2025, the Petitioner claimed 88 employees.

SCOPS denied the petition, concluding that the Petitioner did not submit one of the types of evidence required by the regulation at 8 C.F.R. § 204.5(g)(2), and therefore did not establish its ability to pay the proffered wage

On appeal, the Petitioner asserts that SCOPS abused its discretion in failing to consider all relevant factors, including that it employs more than 100 people. The Petitioner also asserts that its parent company has sufficient cash reserve and net current asserts to establish its ability to pay the proffered wage. With its appeal, the Petitioner submits a letter dated June 17, 2025, from its "SVP of Finance" attesting to having 104 employees and the ability to pay the Beneficiary the proffered wage. The letter appears to include a digital, rather than original, signature.

The Petitioner was put on notice of the specific evidentiary requirements at 8 C.F.R. § 204.5(g)(2) and was given a reasonable opportunity to provide evidence that meets these requirements prior to the denial of this petition. The Petitioner does not contend that this evidence was unavailable at the time it responded to the RFE on July 1, 2025. In fact, the letter from the "SVP of Finance" is dated before the Petitioner's RFE response and would appear to have been available at that time. Therefore, we will not consider this evidence for the first time on appeal to determine the Petitioner's ability to pay the proffered wage. See *Matter of Furtado,* 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano,* 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

As noted above, USCIS is not compelled to accept a statement from a financial officer of an employer with 100 or more workers. Here, the letter from the SVP of Finance is inconsistent with other evidence in the record regarding the number of people the Petitioner employs. Where there are inconsistencies in the record, the Petitioner must resolve such inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho,* 19 I&N Dec. 582, 591-92. (BIA 1988).

In addition, we note that USCIS records show the Petitioner's filing of Forms I-140, Immigrant Petitions for Alien Workers, for more than 10 other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). This Petitioner must therefore demonstrate its ability to pay the combined proffered wages of this petition and any others that were pending or approved at the time of this petition's February 15, 2023 priority date or filed thereafter. *See Patel v. Johnson*, 2 Fed.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple Form I-140 petitions). *See also* 6 *USCIS Policy Manual* E.(4)(D)(2).

The evidence in the record reflecting that the Petitioner has fewer than 100 employees, the petitions for multiple beneficiaries, and the lack of an original signature on the letter from the Petitioner's financial officer diminish the letter's probative value. Therefore, the letter alone is not sufficient to establish the Petitioner's ability to pay the proffered wage and it is not an abuse of discretion to require the Petitioner to submit at least one type of initial evidence prescribed at 8 C.F.R. § 204.5(g)(2). *See* 6 *USCIS Policy Manual* E.(4)(A)(4).

On appeal, the Petitioner also submits 2022 IRS Form 1065, U.S. Return of Partnership Income, for its parent company.[2] This tax return predates the February 15, 2023 priority date and does not demonstrate the Petitioner's continuing ability to pay wages to all beneficiaries. Further, a legal entity generally has a separate existence from its shareholders, members, managers, officers or owners. Generally, we do 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 of a limited partnership. *See Matter of Aphrodite Investments Ltd.,* 17 I&N Dec. 530 (Comm'r 1980) (finding that a corporation is a separate and distinct legal entity from its owners or stockholders); see also *Sitar Restaurant v. Ashcroft,* No. CIV.A.02-30197-MAP (D. Mass. Sept. 18, 2003) (finding that nothing in the governing regulation requires USCIS to consider the financial resources of individuals or entities who have no legal obligation to pay the wage). An annual report, audited financial statement, or tax return of a parent company is more probative of a subsidiary's ability to pay the proffered wage where the subsidiary's financial data is presented separately within the document. *See generally* 6 *USCIS Policy Manual* E.(4)(B). Here, the Petitioner does not provide its own financial data separate from its parent company, precluding us from conducting an analysis of *the Petitioner's* ability to pay the proffered wage.

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. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). 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

[2] The tax return identifies the Petitioner's parent company as [redacted] a domestic limited liability company owned equally by two partners: [redacted] A search of public records reflects that [redacted] and its subsidiaries filed a voluntary notice of bankruptcy under Chapter 11 of the U.S. Bankruptcy Code on July 9, 2025. *See* [redacted] Jul. 9, 2025 (visited Feb. 19, 2026).

Beneficiary's replacement of another employee or outsourced service; or other potential factors. *See Id.* at 614-15; *see also* 6 *USCIS Policy Manual* E.(4)(C)(3).

The record indicates that the Petitioner was established in 1969 and employs approximately 85-100 individuals. The record does not include the Petitioner's individual financial information for any year. Nor does the record demonstrate the Petitioner's possession of an outstanding business reputation in its industry or its incurrence of uncharacteristic expenses or losses that prevented its ability to pay the proffered wage in any year. Additionally, one partner of the Petitioner's parent company is in bankruptcy. In any further filings, the Petitioner must address how [redacted] bankruptcy proceedings impact it and its parent company. 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.