U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42647052

Date: MAR. 26, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an accounting and business advisory firm, seeks to employ the Beneficiary as "information technology support." The company requests his 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 aliens for U.S. permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, the company submits additional evidence that it claims establishes its ability to pay.[1]

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 decline to consider the company's additional evidence on appeal. We will therefore dismiss the appeal.

I. LAW

Immigration as a professional 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 U.S. Citizenship and Immigration Services (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

[1] The Petitioner submitted its appellate brief and additional evidence in this matter with a second appeal. *See* IOE 09 356 08105. We will issue a separate decision on the second appeal.

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 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.[2] *Id.*; *see also* 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.")

The Petitioner's labor certification states the offered job's proffered wage as $75,670 a year. The petition's priority date is October 31, 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 filed the petition in August 2025. At that time, regulatory required evidence of the company's ability to pay the proffered wage in 2025 was not yet available. Thus, the company needed to demonstrate its ability to pay only in 2023, the year of the petition's priority date, and 2024.

The initial petition lacked any evidence of the Petitioner's ability to pay the proffered wage. SCOPS therefore mailed a request for additional evidence (RFE) to the company, asking it to provide evidence of its ability to pay in 2023 and 2024 within the following 12 weeks.

The Petitioner timely responded to the RFE, but the response omitted the requested evidence. Counsel stated:

> In good faith, the Petitioner is diligently assembling and procuring the necessary documentary evidence establishing its ability to pay, at all relevant times, the proffered salary/wage concerning this matter. Petitioner respectfully requests USCIS issue another Request for Evidence, providing the Petitioner the longest period of time permissible under the relevant statute, rules and regulations, to produce such documentation to USCIS.

After reviewing the Petitioner's RFE response, SCOPS denied the petition for lack of evidence of the company's ability to pay the proffered wage.

On appeal, the Petitioner submits copies of its federal income tax returns for 2023 and 2024 and payroll records. The company claims that these materials demonstrate its ability to pay the proffered wage.

[2] If a petitioner employs at least 100 people, USCIS has discretion to accept a statement from a financial officer demonstrating the business's ability to pay the proffered wage in lieu of regulatory required evidence. 8 C.F.R. § 204.5(g)(2). The Petitioner neither claimed nor demonstrated its employment of at least 100 people.

The record, however, shows that, before the petition's denial, SCOPS' RFE provided the Petitioner with notification of the required ability-to-pay evidence and a reasonable opportunity to submit it. The company has not demonstrated, or even claimed, the evidence's unavailability at the time of the RFE response deadline. We therefore decline to accept the evidence on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when a petitioner received notice of required evidence and a reasonable opportunity to provide it).

Also, SCOPS did not have to issue a second RFE to give the Petitioner more time to gather the required evidence. As the RFE stated, SCOPS had already provided the company the maximum period in which to submit its RFE response. *See* 8 C.F.R. § 204.5(b)(8)(iv). ("[I]n no case shall the maximum response period provided in a request for evidence exceed twelve weeks.") Further, because the initial petition omitted evidence of the company's ability to pay the proffered wage, SCOPS could have denied the filing without first issuing a RFE. *See* 8 C.F.R. § 103.2(b)(8)(ii) ("If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility.")

III. CONCLUSION

The Petitioner did not demonstrate its ability to pay the offered job's 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.