U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41986624

Date: MAR. 30, 2026

Motions on Administrative Appeals Office Decision

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

The Petitioner, an artist management and development firm, seeks to employ the Beneficiary as an "international entertainment strategic specialist." The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 204.5(b)(3)(A)(i). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years' training or experience. *Id.*

Service Center Operations (SCOPS) denied the petition and dismissed the Petitioner's following combined motions to reopen and reconsider. SCOPS concluded that the company did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, we affirmed SCOPS' decision. *See In Re: 39982563* (AAO Nov. 13, 2025).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. The company submits additional evidence of its ability to pay the proffered wage and contends that we improperly discounted and mischaracterized evidence, and misapplied law and policy.

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). Upon review, we conclude that neither the company's new evidence nor arguments demonstrate its ability to pay the proffered wage. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, regulations limit our scope of review to the most recent decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii) (referring to "the prior decision" and "the latest decision in the proceeding"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

An immigrant visa petitioner must demonstrate its continuing ability to pay an offered job's proffered wage, from a petition's priority date until a beneficiary obtains lawful 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. *Id.*[1]; *see generally* 6 *USCIS Policy Manual* E.4(A), www.uscis.gov/policy-manual ("[T]o establish ability to pay, the petition must include copies of the petitioner's annual reports, federal tax returns, or audited financial statements for each available year from the [petition's] priority date.")

On motion, the Petitioner complies with the regulation's evidentiary requirement. The company previously submitted a copy of its owner's IRS Schedule C, Profit or Loss from Business, for 2022, the year of the petition's priority date.[2] The company's current filing includes copies of the owner's Schedules C for 2023 and 2024.

The Petitioner filed its combined motions in December 2025. Thus, regulatory required evidence of its ability to pay that year was not yet available. For purposes of this decision, we will therefore consider the company's ability to pay the proffered wage from 2022 through only 2024. In any future filings in this matter, however, the company must submit regulatory required evidence of its ability to pay in 2025. *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.")

In determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year, beginning 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 proffered wage or did not pay a beneficiary at all, USCIS considers whether the business generated annual amounts of net income or net current assets sufficient to pay any differences between the proffered wage and 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).[3]

The Petitioner's labor certification states the offered job's proffered wage as $67,850 a year. The petition's priority date is October 24, 2022, 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).

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

[2] The record identifies the Petitioner as a limited liability company (LLC) owned by a single member. For federal income tax purposes, a single-member LLC may choose to be treated as a "disregarded entity," with its finances reflected on Schedule C of its owner's federal income tax return. *See* 26 C.F.R. § 301.7701-3; *see also* U.S. Internal Revenue Serv. (IRS), "Single member limited liability companies," www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies.

[3] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *see also Econo Inn Corp. v Rosenberg*, No. 15-CV-10991, 2015 WL 6865896, *6-9 (E.D. Mich. Nov. 9, 2015).

The record lacks evidence that the Petitioner employed the Beneficiary from 2022 through 2024.[4] Thus, based solely on wages paid, the company did not demonstrate its ability to pay the proffered wage.

The copies of the Schedules C of the Petitioner's owner show that, from 2022 through 2024, the company annually lost money: $4,585 in 2022; $1,518 in 2023; and $3,965 in 2024. Those negative net income amounts do not equal or exceed the annual proffered wage of $67,850. Also, Schedules C do not report net current assets. Thus, based on examinations of the company's wages paid, net income, and net current assets, the Petitioner has not established its ability to pay from 2022 through 2024.

But "[t]he ability to pay analysis is more nuanced than simply reviewing wages paid, net income, and net current assets." 6 *USCIS Policy Manual* E.4(C)(3). On motion, the Petitioner continues to contend that other factors demonstrate its 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).

In *Sonegawa*, a dress shop proprietor/designer petitioned to employ an assistant designer. *Matter of Sonegawa*, 12 I&N Dec. at 612. The petitioner had profitably conducted business for more than 11 years, employing four to eight employees. *Id.* at 614. The petitioner's most recent income tax return reported a business profit less than the assistant designer's proffered wage. *Id.* But the Commissioner of the former Immigration and Naturalization Service nevertheless concluded that she had demonstrated her ability to pay the offered job's proffered wage. *Id.* at 615. The petitioner documented that the shop had moved during the year of the most recent tax return, causing the business to pay "double rent" for five months, incur "large moving costs," and cease business operations for "a period of time." *Id.* at 614. She also submitted evidence of the business's more profitable operations the following year. *Id.* The record further showed that national magazines had featured the petitioner and her shop and that they had made gowns for an internationally recognized beauty pageant. *Id.* at 615. The Commissioner stated: "After careful consideration of all the above circumstances, we find that the petitioner's expectations of continued increase in business and increasing profits are reasonable expectations." *Id.* As in *Sonegawa*, we may determine that, despite enduring a brief unprofitable period, a petitioner has the ability to pay a proffered wage "depend[ing] on the specific facts presented and consideration of all of the circumstances." 6 *USCIS Policy Manual* E.4(C)(3).

As our appellate decision found, a totality-of-the-circumstances analysis under *Sonegawa* does not favor the Petitioner. *Sonegawa* held that one lackluster financial year does not necessarily prevent a petitioner with a history of profitability from demonstrating its continuing ability to pay a proffered wage. *Matter of Sonegawa*, 12 I&N Dec. at 615; *see also Constr. & Design Co. v. USCIS*, 563 F.3d 593, 595 (7th Cir. 2009) (stating that, under *Sonegawa*, an employer may demonstrate its ability to pay if "the employer usually makes an adequate profit but has encountered a 'rough patch'"); *Taiyang Foods Inc. v. USCIS*, 444 F. App'x 115 (9th Cir. 2011) ("*Sonegawa* is applicable to this case only if the failure of Taiyang Foods to pay the proffered wage was an anomaly amongst profitable years.") Unlike the petitioner in *Sonegawa*, the Petitioner here has not demonstrated a history of profitability. The record contains copies of the Schedules C of the company's owner from 2018 through 2024. The tax documents show that, during that period, the company's annual profits did not equal or exceed the

[4] The record shows that the Petitioner began to employ the Beneficiary in July 2025.

offered job's annual $67,850 proffered wage. In fact, the Schedules C show that during that period the company never even generated annual *revenues* equaling or exceeding the proffered wage. Also, on the Form I-140, Immigrant Petition for Alien Workers, the Petitioner claimed to employ two people. But the Schedules C do not indicate that, from 2018 through 2024, the company paid any wages. Unlike the petitioner in *Sonegawa*, the Petitioner here has not demonstrated a history of profitability while employing others. Thus, a totality-of-the-circumstances analysis under *Sonegawa* does not demonstrate its ability to pay the proffered wage.

The Petitioner contends that our appellate decision disregarded the company's claim that the Beneficiary's employment would generate increased company revenues and income. The company's owner estimated that, after the Beneficiary began working for the company in July 2025, it would generate revenues of $99,000 over the rest of that year. On motion, the company submits copies of bank account statements indicating that, from July 2025 to December 2025, it received $58,788.05 in revenues. That amount falls short of the owner's projection, but the amount appears to have covered the Beneficiary's proffered wage during that period.

Sonegawa, however, does not stand for the proposition that a petitioner can demonstrate its ability to pay after a lengthy period of unprofitability. In *Sonegawa*, the petitioner reported insufficient profit to pay the proffered wage in 1966 but submitted evidence of the business's increased profitability the very next year. *Matter of Sonegawa*, 12 I&N Dec. at 614. Here, the Petitioner has not demonstrated that it increased its profitability until 2025, about three years after the petition's priority date and about four years after the company's most recent prior profitable year.

The Petitioner contends that our appellate decision erred by finding that publications that featured online articles mentioning the company and its owner lack the "reach or reputation" of those that the petitioner in *Sonegawa* submitted about her and her shop. The Petitioner argues that the publications it submitted have both national and international viewers. The company states: "These circulation figures show that [its owner] has been featured in publications that are at least on par[] with the publications in *Matter of Sonegawa*."

We disagree. The petitioner in *Sonegawa* and her shop were featured in [redacted] two of the most popular U.S. magazines at that time. *Matter of Sonegawa*, 12 I&N Dec. at 615. The Petitioner has not demonstrated that two such high-circulation U.S. magazines mentioned it or its owner. But, even if the Petitioner established its appearance in publications comparable to those in *Sonegawa*, our analysis would not change. *Sonegawa* would not favorably apply to the Petitioner primarily because, unlike the petitioner in *Sonegawa*, the Petitioner still would not have demonstrated a history of profitability.

The Petitioner also contends that our appellate decision incorrectly stated that "it is not apparent that the Petitioner would continue to operate under [its current owner]'s leadership or ownership." The company submits a new letter from its owner stating his intent to continue managing the business. He states:

> I feel well enough to meet with potential clients, meet with [the Beneficiary] about strategies in the business, make decisions on the directions to move forward with projects, and otherwise operate my business. However, due to my high blood pressure,

> I need to avoid the day-to-day duties associated with managing clients. [The Beneficiary] has been and will continue to cover those responsibilities while I manage the business.

Despite the new letter, we stand by our previous statement. At that time, the most recent letter from the Petitioner's owner stated: "One of the main reasons for [the company]'s current financial situation is that I have had several health issues that have caused multiple periods where [the company] has been unable to conduct regular business." He stated that his health issues began in 2020 and that he suffered from high blood pressure, diabetes, high cholesterol, kidney disease, and postural orthostatic tachycardia syndrome (POTS). He stated that he was hospitalized at one point and that the combination of numerous medical appointments, medications, and symptoms caused multiple periods of business inactivity. Thus, at the time of the appeal, it was not clear that he would continue to operate his business.

The Petitioner also takes issue with our appellate decision's finding that the company's inability to generate sufficient profits to pay the proffered wage since the petition's priority date was not "uncharacteristic." The new letter from the company's owner attributes its lackluster post-2022 financial results to the combined effects of his health problems and the COVID-19 pandemic.

We acknowledge the Petitioner's stated reasons for the company's recent financial difficulties. But we did not find the recent results to be "uncharacteristic" because they did not materially change. The record shows that, both before and after the petition's priority date, the company did not generate enough profits to equal or exceed the offered job's proffered wage.

Finally, the Petitioner argues that policy considerations support a favorable ability-to-pay finding. For example, the company cites a May 2025 U.S. Presidential proclamation supporting small businesses. The company also argues that, if we deny the petition, the Beneficiary's son could squander an opportunity to immigrate with his father because the son will soon turn 21 years of age. *See* section 203(d) of the Act (allowing spouses or children of employment-based immigrants to accompany or follow to join them).

The Act, however, makes available only about 140,000 employment-based immigrant visas a year, *see* section 201(d)(1) of the Act, 8 U.S.C. § 1151(d)(1), and, as of this decision, demand for skilled worker visas exceeds the annual supply, resulting in almost a two-year delay. *See* Bureau of Consular Aff., U.S. Dep't of State, *Visa Bulletin for March 2026*, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-march-2026.html. Under these circumstances, the policy considerations that the Petitioner cites do not persuade us. Other petitioners with priority dates similar to the company's have demonstrated their ability to pay at the time of their petitions' priority dates, as regulatorily required. It is unfair to them to approve one of a limited amount of immigrant visas for the Beneficiary where the Petitioner, almost three years' beyond the priority date, has not demonstrated its ability to pay the proffered wage. *See Matter of Great Wall Chinese Rest.*, 16 I&N Dec. 142, 144-45 (Acting Reg'l Comm'r 1977) ("The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer.")

III. CONCLUSION

The Petitioner's motions do not demonstrate its ability to pay the proffered wage. We will therefore dismiss them and affirm our appellate decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: 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.