U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42681186

Date: MAY 19, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, the head of a household, seeks to employ the Beneficiary as a childcare provider. The Petitioner requests the Beneficiary's classification under the employment-based, third-preference (EB-3) 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 and individuals may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring less than two years of training and experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner's evidence of her ability to pay the offered job's proffered wage did not satisfy regulatory requirements. On appeal, she contends that SCOPS improperly disregarded federal tax transcripts and bank and investment account statements that she asserts show her ability to pay.

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 agree with SCOPS that evidence of her ability to pay the proffered wage lacks one of the regulatory required forms of evidence. 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 U.S. Citizenship and Immigration Services (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. Ability to Pay the Proffered Wage

A petitioner must demonstrate their 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 annual reports, federal tax returns, or audited financial statements.[1] *Id.*; *see generally* 6 *USCIS Policy Manual* E.4(A) ("[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.")

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, USCIS considers whether the petitioner 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 childcare provider job as $39,437 a year. The petition's priority date is January 11, 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).

SCOPS issued a request for additional evidence (RFE), asking the Petitioner to submit completed copies of either a 2024 annual report, a 2024 audited financial statement, or a 2024 federal tax return to include all schedules. At the time the Petitioner responded to SCOPS' first RFE,[3] regulatory required evidence of her ability to pay the proffered wage in 2025 was not yet available. For purposes of this decision, we will therefore consider her ability to pay only in 2024, the year of the petition's priority date. *See* 6 *USCIS Policy Manual* E.4(A) (requiring a petitioner to submit copies of their annual reports, federal tax returns, or audited financial statements "*for each available year* from the priority date.") (emphasis added).

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[1] If a U.S. employer has at least 100 employees, it may instead provide a statement from a financial officer. 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(A), www.uscis.gov/policy-manual. The Petitioner does not claim to employ at least 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); *Four Holes Land & Cattle, LLC v Rodriguez*, No. 5:15-cv-03858, 2016 WL 4708715, *5 (D.S.C. Sept. 9, 2016).

[3] SCOPS issued two RFEs in this matter. Only the first one, however, requested additional evidence of the Petitioner's ability to pay the proffered wage.

The Petitioner did not submit any evidence that she employed the Beneficiary in 2024. Thus, based solely on wages paid, the Petitioner has not demonstrated her ability to pay the proffered wage.

The Petitioner submitted copies of federal tax transcripts for 2024. She provided:

- a tax account transcript, showing basic data such as her filing status and taxable income;
- a wage and income transcript, showing data that the U.S. Internal Revenue Service (IRS) received from information returns such as her Forms W-2, 1098, 1099, and 5498; and
- a tax return transcript, showing most, but not all, line items from her income tax return, along with forms or schedules.

See Internal Revenue Service (IRS), "Transcript types for individuals and ways to order them," www.irs.gov/individuals/transcript-types-for-individuals-and-ways-to-order-them. The transcripts indicate her receipt of $291,932 in wages and $293,285 in total income that year. The Petitioner also submitted copies of monthly bank and investment account statements for 2024.

SCOPS found that the Petitioner's materials did not include regulatory required evidence of her ability to pay the proffered wage. SCOPS stated: "The petitioner's W2 transcripts are considered to be secondary evidence for your ability to pay. The 1040 is only a transcript and cannot be used as ability to pay (need a complete copy.)"

SCOPS properly rejected the Petitioner's evidence. The applicable regulation specifies: "Evidence of this ability [to pay the proffered wage] shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(A) ("The only exception to this requirement is if a U.S. employer employs 100 or more workers, it may instead include a financial officer statement."). The Petitioner submitted copies of her federal tax transcripts for 2024, not a complete federal tax return as requested. The Petitioner did not indicate the unavailability of a complete tax return, and did not provide a reason for omitting the regulatory required evidence. Also, despite receiving notification of the deficiency, the Petitioner did not send a complete copy of the tax return and all schedules on appeal or indicate why she was unable to send a copy. The transcripts are not copies of her federal income tax return, do not contain all the information from a Form 1040 tax return and do not represent a complete copy of her tax return. *See* IRS, "Transcript types for individuals and ways to order them," *supra* ("A transcript isn't a photocopy of your return."). We note that the transcript does not indicate the number of dependents, if any, that the Petitioner has, which would impact the expenses of an individual household, and the household expenses would be considered in the ability to pay analysis for the individual household. *See generally* 6 *USCIS Policy Manual* E.4(B) ("For sole proprietors and individual employers of domestic workers, … USCIS considers the employer's adjusted gross income, minus their personal expenses, when determining net income.") Similarly, the bank and investment account statements do not match one of the required materials listed in the regulation.

On appeal, the Petitioner asserts that:

> nothing in 8 C.F.R. § 204.5(g)(2) authorizes the categorical refusal to consider an IRS-issued return transcript as evidence of the information shown and reported on the return. … Even if USCIS preferred a different format, the governing question remains

> whether the Petitioner has met the burden by a preponderance of the evidence using relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The IRS-issued transcript is quintessentially probative of what was reported and processed for the relevant tax year.

We disagree. The Petitioner had to satisfy 8 C.F.R. § 204.5(g)(2). The regulation allows a petitioner to submit additional evidence of their ability to pay a proffered wage. But the rule specifies that the submitted evidence must include "copies of annual reports, federal tax returns, or audited financial statements." *See* 8 C.F.R. § 204.5(g)(2). Thus, the submission of one of the specified materials is not merely a "preference;" it is a regulatory requirement. If the Petitioner does not have a copy of her 2024 federal income tax return, she may obtain one from the IRS. *See* IRS, "Transcript types for individuals and ways to order them," *supra* ("If you need a copy of your original return, submit Form 4506, Request for Copy of Tax Return.").[4]

B. Additional Issues

Although unaddressed by SCOPS, the Petitioner has not demonstrated her intent to employ the Beneficiary in the offered job. *See Matter of Izdebska*, 12 I&N Dec. 53, 54 (Reg'l Comm'r 1966) (requiring a petitioner to intend to employ a beneficiary in the job described on an accompanying labor certification). Neither the Petitioner's labor certification nor application for a prevailing wage determination (PWD)[5] indicates that she would employ the Beneficiary on a live-in basis. *See* 20 C.F.R. § 656.19 (detailing additional labor certification requirements for live-in domestic occupations). But the petition's cover letter states that the job involves "full-time, long-term, live-in care for minor children." *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies of record with independent, objective evidence of where the truth lies).

Also, the Petitioner's PWD states that the offered job requires the abilities to swim, and obtain and maintain a Virginia driver's license. The record, however, lacks sufficient evidence that, by the petition's priority date, the Beneficiary had these abilities. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977) (requiring petitioners to demonstrate beneficiaries' possession of all DOL-certified job requirements by petition priority dates).

Because SCOPS did not notify the Petitioner of these evidentiary deficiencies, we do not base this decision on them. In any future filings in this matter, however, the Petitioner must address the deficiencies.

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[4] Even if the Petitioner's tax transcripts or bank and investment account statements satisfied one of the acceptable materials specified in 8 C.F.R. § 204.5(g)(2), they would not demonstrate her ability to pay the proffered wage. When determining the net income of individual petitioners for domestic service workers, USCIS subtracts a petitioner's living expenses from their adjusted gross income. 6 *USCIS Policy Manual* E.4(B). SCOPS' RFE did not ask the Petitioner to provide her living expenses – such as the costs of housing, utilities, food, clothing, and transportation for her and her dependents. Thus, the record lacks information about her living expenses, and we would not be able to properly determine whether she has the ability to pay the proffered wage.

[5] As of June 1, 2023, DOL uses Forms ETA-9141, Applications for Prevailing Wage Determinations, to collect information about offered jobs' minimum requirements. *See generally* 6 *USCIS Policy Manual* E.6(A)(2).

III. CONCLUSION

The Petitioner did not submit one of the regulatory required forms of evidence to demonstrate her 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.