U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42993292

Date: MAY 22, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a transportation business, seeks to employ the Beneficiary as a truck driver. 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.*

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 ETA Form 9089 states the proffered wage of truck driver as $62,109 per year. The petition's priority date is November 19, 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).

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 2012. On the ETA Form 9089, the Petitioner stated that it had 80 employees. On the Form I-140 petition, filed on January 9, 2026, the Petitioner stated that it had 120 employees.

The Petitioner submitted Internal Revenue Service (IRS) Form 1065, U.S. Return of Partnership Income, of its parent company, [redacted] LLC, for 2022, 2023 and 2024. The tax returns indicate that [redacted] LLC has 100% ownership of nine entities, including the Petitioner. The tax returns reflect the following amounts:

Year	Net Income	Net Current Assets
2022	$814,310	-$5,913,974
2023	-$2,878,055	-$3,911,705
2024	$655,380	-$6,088,977

The Petitioner also provided a letter from its chief financial officer, attesting to its ability to pay the Beneficiary the proffered wage. The letter, dated February 28, 2025, and signed by the Petitioner's financial director/chief financial officer, states that the has Petitioner 120 "W-2 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).

SCOPS denied the petition, concluding that the Petitioner did not establish its ability to pay the proffered wage in 2023. SCOPS noted that the tax returns for [redacted] LLC reflect negative net income and net current assets in 2023, which is below the proffered wage. SCOPS also declined to consider the 2025 letter from the Petitioner's financial director, stating that the letter "does not include any financial information about the Petitioner to support the basis of his conclusion." SCOPS noted that the record did not support that the Petitioner had at least 100 employees in 2023, and that the letter does not include "a detailed explanation of the Petitioner's 2023 financial standing."

On appeal, the Petitioner asserts that SCOPS 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. Counsel for the Petitioner states in her appellate brief that "the 2023 loss resulted primarily from the repayment of prior-year intercompany and affiliate debt and other non-operational, non-recurring adjustments." Counsel points to other factors that SCOPS could have considered in the totality of the circumstances, including the Petitioner's 2023 gross income, wages paid to current employees in recent years, media accounts about the Petitioner's business, the Petitioner's 14 years in business, historical growth of the Petitioner's business despite an uncharacteristic low in 2023 due to debt payment, its number of employees, its recovery from loss in 2024, and its overall reputation in the industry.

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, supra,* at E.(4)(A)(4).

Here, we agree with SCOPS that the letter from the financial director is not supported by other evidence in the record regarding the number of people the Petitioner employed in 2023. In addition, we note that USCIS records show the Petitioner's filing of Forms I-140, Immigrant Petitions for Alien Workers, for more than 100 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 November 19, 2022 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, supra,* at E.(4)(D)(2).

The lack of evidence in the record reflecting that the Petitioner had at least 100 employees in 2023, the lack of specific financial information in the letter, and the petitions for multiple beneficiaries

diminish the letter's probative value. Therefore, the letter alone is not sufficient to establish the Petitioner's ability to pay the proffered wage. *See* 6 *USCIS Policy Manual, supra,* at E.(4)(A)(4).

Although the record includes tax returns for the Petitioner's parent company, 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, supra,* at 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. This is particularly important here, as the Petitioner is one of nine wholly owned subsidiaries of the parent reported on the tax return. Without specific information about the Petitioner's finances, we are precluded from determining how much of the parent company's funds are available to the Petitioner rather than to each of the other subsidiaries.

Additionally, while we acknowledge counsel's assertions that the negative net income in 2023 "is driven primarily by internal debt-repayment and adjustment transactions, not by a collapse in revenue or profitability of the core transportation business," the record does not include corroborating statements from the Petitioner or from the Petitioner's parent company. Unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1998) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

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. 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. *See Id.* at 614-15; *see also* 6 *USCIS Policy Manual, supra,* at E.(4)(C)(3).

The record indicates that the Petitioner was established in 2012 and has employed approximately 80-120 individuals in the last four years. Although counsel references the historical growth of the Petitioner's business, three years of the Petitioner's parent company's tax returns are insufficient to demonstrate the Petitioner's historical growth. The record does not include the Petitioner's individual financial information for any year. Although counsel references "media accounts about the petitioner's business," the record does not include such evidence, or other evidence of the Petitioner's business reputation in its industry. With respect to the incurrence of uncharacteristic expenses or losses that prevented the Petitioner's ability to pay the proffered wage in any year, as noted above, beyond counsel's unsupported statement, the record does not include an explanation from the Petitioner or its officers. 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.