U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38157340

Date: MAY 28, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a transportation company, seeks to employ the Beneficiary as a truck driver. The company requests his 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 may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring less than two years of training or experience. 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate its required, continuing ability to pay the offered job's proffered wage. On appeal, the company contends that it met that requirement by submitting a letter from a financial officer.

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 conclude that, because the company did not establish its employment of at least 100 people, SCOPS properly exercised its discretion in discounting the financial officer's statement as proof of the company's ability to pay the proffered wage. 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 apply to the U.S. Department of Labor (DOL) for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of a noncitizen in the position 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 a noncitizen 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 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 must generally include copies of a petitioner's annual reports, federal tax returns, or audited financial statements. *Id.*

When 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), 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 amounts of net income or net current assets sufficient to pay any differences between the proffered wage and the actual wages paid. *See generally* 6 *USCIS Policy Manual* E.4(C)(2). If net income and net current assets are insufficient, the Agency may consider other factors potentially affecting a business'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) ("The ability to pay analysis is more nuanced than simply reviewing wages paid, net income, and net current assets.")[1]

A petitioner need not submit regulatory required evidence of its ability to pay a proffered wage, however, if the business employs at least 100 people. In that case, USCIS "may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage." 8 C.F.R. § 204.5(g)(2).

The Petitioner's labor certification states the proffered wage of the offered job of truck driver as $62,109 a year. The petition's priority date is November 3, 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 record indicates the Beneficiary's residence abroad, and the Petitioner did not submit evidence that it has employed him. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

The Petitioner's initial March 2024 filing included a copy of its parent company's federal income tax return for 2022. The tax return reflects net income of $814,310 and net current assets of -$6,013,974. The negative net current asset amount falls short of the $62,109 annual proffered wage. But the net income amount exceeds the proffered wage. SCOPS therefore found that the Petitioner demonstrated its ability to pay the proffered wage in 2022, the year of the petition's prior date.

[1] Federal courts have upheld our method of determining a petitioner's ability to pay a proffered wage. *See, e.g., Constr. & Design Co. v. USCIS*, 563 F.3d 593, 597 (7th Cir. 2009).

A. The Petitioner's Ability to Pay in 2023

Noting insufficient evidence of the company's ability to pay in 2023, SCOPS mailed the Petitioner a request for additional evidence (RFE). *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay a proffered wage "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence"). The RFE asked the company to submit regulatory required evidence of its ability to pay in 2023 and any additional evidence it may wish to provide.

The Petitioner's RFE response included a letter from the company's financial director/chief financial officer (CFO). The company stated: "In lieu of tax records, we are submitting a statement from the Financial Director (CFO) confirming that the company has over 100 employees, therefore [it is] able to pay the wage of $62,109." The January 2025 letter from the finance director/CFO indicates the Petitioner's issuance of IRS Forms W-2, Wage and Tax Statements, to 102 workers. The letter states: "Based on the above (over 100 employees), our company is able to pay the proffered wage of $62,109 per year, as determined in the approved [labor certification application]."

SCOPS' decision notes that both the Petitioner's labor certification application, filed in November 2022, and the company's Form I-140, Immigrant Petition for Alien Workers, submitted in March 2024, state the business's employment of 80 people. SCOPS therefore questioned the financial director/CFO's statement of 102 employees. The decision states: "USCIS is unable to determine the credibility and reliability of the information provided, and whether you qualify to submit a letter from your financial officer to establish your ability to pay the beneficiary the proffered wage." *See Doe v. McAleenan,* 929 F.3d 478, 486 (7th Cir. 2019) (quoting *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988)) (requiring petitioners to resolve inconsistencies of record with "independent, objective evidence"). SCOPS concluded that, although the company demonstrated its ability to pay in 2022, it did not establish that ability in 2023 and thus its "continuing" ability to pay the proffered wage from the petition's priority date onward. *See* 8 C.F.R. § 204.5(g)(2).

On appeal, the Petitioner contends that it should have received an opportunity to submit additional evidence regarding its number of employees. It argues that there is "no inconsistency" of record and that the employee discrepancy that SCOPS perceived "is simply associated with the passage of time." The company indicates that its number of employees did not reach 100 until after the petition's filing in March 2024. The company submits a copy of its IRS Form W-3, Transmittal of Wage and Tax Statements, stating its issuance of 120 Forms W-2 to employees in 2024. The company states: "[I]t is [un]reasonable to expect that the number of W-2 workers will stay the same throughout the entire time."

The record, however, supports SCOPS' petition denial. First, contrary to the Petitioner's argument, SCOPS need not have provided the company with an additional opportunity to submit evidence of its number of employees. SCOPS' prior RFE asked the business for evidence of its ability to pay in 2023 and described the various forms of regulatory acceptable proof, including – for petitioners with at least 100 employees – a statement from a financial officer. As previously indicated, the regulation states that USCIS "may accept" such a statement establishing a petitioner's ability to pay. *See* 8 C.F.R. § 204.5(g)(2). Thus, "USCIS has the *discretion* to determine whether the statement is, by itself, sufficient to establish ability to pay." 6 *USCIS Policy Manual* E.4(A)(4) (emphasis added). "Detailed

letters that explain the basis of the financial officer's conclusion in terms of the company's finances are the most probative." *Id.* The Petitioner therefore knew that, to demonstrate its ability to pay in 2023, it could have submitted other forms of evidence but chose instead to provide only a conclusory statement from a financial officer that SCOPS could reject in its discretion.

As SCOPS' RFE provided the Petitioner with an opportunity to submit a statement from a financial officer and evidence of its number of employees, we decline to consider the company's evidence on appeal, including the IRS Form W-3 showing its issuance of 120 Forms W-2 in 2024. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (discounting new, appellate evidence from a petitioner who, before a decision's issuance, received notice of the required materials and a reasonable opportunity to provide them); *see also* 8 C.F.R. § 103.2(b)(11) (requiring submission of all evidence in response to a RFE "together at one time").

Also, even if we considered the Petitioner's appellate evidence, it would not demonstrate the company's eligibility to submit a statement from a financial officer as proof of the business's ability to pay. The instructions to IRS Form W-3 required the company to list the "total number" of IRS Forms W-2 it issued to employees in 2024. *See* U.S. Internal Revenue Serv. (IRS), "About Form W-3, Transmittal of Wage and Tax Statements," www.irs.gov/forms-pubs/about-form-w-3. As multiple people may have filled a single job during the year, the company's number of Forms W-2 for 2024 may exceed its number of employees at any given time that year.

Further, because the Petitioner had not demonstrated its qualifications to submit the financial officer's statement, SCOPS did not abuse its discretion in discounting the document. At the filing times of the labor certification application and petition, the company stated its employment of 80 people, less than the 100 required to submit the statement. Also, the January 2025 letter from the financial director/CFO stated the company's employment of 102 people, barely above the required 100 minimum. Where "[e]vidence in the record reflects that the petitioner may have fewer than 100 employees," "a statement from a financial officer alone might not be sufficient to establish ability to pay." 6 *USCIS Policy Manual* E.4(A)(4).

The Petitioner also indicates that it did not employ 100 or more people until after the petition's filing in March 2024. Thus - during 2023, the relevant year for ability to pay purposes - the company did not qualify to submit a statement from a financial officer as evidence of its ability to pay. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence"); *see also* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request"). SCOPS therefore properly exercised its discretion and discounted the statement from the Petitioner's financial officer as evidence of the company's ability to pay in 2023.

Although unaddressed by SCOPS, the Petitioner also did not demonstrate its ability to pay the combined proffered wages of multiple beneficiaries of Forms I-140, Immigrant Petitions for Alien Workers, it filed. USCIS records indicate the company's filing of at least seven approved or pending I-140 petitions for other beneficiaries.[2]

[2] USCIS records identify the Petitioner's seven other I-140 petitions by the following receipt numbers: [redacted]; [redacted]; and [redacted].

A petitioner must demonstrate its ability to pay a petition's proffered wage from the filing's priority date 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 and petitions for other beneficiaries it filed that, as of this petition's November 3, 2022 priority date, were approved, remained pending, or were filed thereafter. *See Patel v. Johnson*, 2 F.Supp.3d 108, 124 (D. Mass. 2014) (affirming our petition revocation where an employer had not demonstrated its ability to "cover the additional sponsored workers"); *see generally* 6 *USCIS Policy Manual* E.4(D)(2) ("[T]he petitioner must demonstrate its ability to pay the proffered wages for each beneficiary for each year starting from the priority date of the petition under review.")[3]

The Petitioner did not provide the proffered wages or priority dates of its other approved or pending petitions. The company therefore has not demonstrated its ability to pay the combined proffered wages of all its applicable petitions.

In any future filings in this matter, the Petitioner must provide the proffered wages and priority dates of its other seven I-140 petitions. The company may also provide additional evidence, including proof that it paid wages to any of the seven other beneficiaries.

B. The Petitioner's Ability to Pay in 2022

SCOPS erred in finding that the Petitioner demonstrated its ability to pay the proffered wage in 2022. The federal income tax return of the Petitioner's parent company showed sufficient net income to pay the offered job's annual proffered wage that year. But the applicable regulation requires "evidence that *the prospective United States employer* has the ability to pay the proffered wage." 8 C.F.R. § 204.5(g)(2) (emphasis added). "[N]othing in the governing regulation, 8 C.F.R. § 204.5, permits the [immigration service] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." *Sitar Rest. v. Ashcroft*, No. CIV.A.02-30197-MAP, 2003 WL 22203713, at *2 (D. Mass. Sept. 18, 2003); *see also* 6 *USCIS Policy Manual* E.4(B) ("Generally, USCIS does not consider the financial resources of persons or entities that have no explicit legal obligation to pay the proffered wage, *including a parent company*.") (emphasis added).

A parent company's tax return "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." 6 *USCIS Policy Manual* E.4(B). The tax return of the Petitioner's parent company, however, does not separately present the Petitioner's financial data for 2022. The tax return therefore does not sufficiently demonstrate the Petitioner's ability to pay the proffered wage that year.

In any future filings in this matter, the Petitioner must also submit additional evidence of its ability to pay the offered job's proffered wage in 2022, the year of the petition's priority date. Unless the company demonstrates that it employed at least 100 people in 2022 and submits a detailed statement from a financial officer, its evidence must include copies of its annual reports, federal tax returns, or audited financial statements. *See* 8 C.F.R. § 204.5(g)(2). The Petitioner may also submit additional

[3] Petitioners need not demonstrate their abilities to pay proffered wages of petitions that they withdrew or that USCIS rejected, denied, or revoked. *See generally* 6 *USCIS Policy Manual* E.4(D)(2). Petitioners also need demonstrate their abilities to pay proffered wages before corresponding petition priority dates or after corresponding beneficiaries obtain U.S. permanent residence. *Id.*

evidence of its ability to pay that year, including materials supporting the factors stated in *Sonegawa*. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15.

III. CONCLUSION

The record did not demonstrate the Petitioner's employment of at least 100 people. SCOPS therefore properly exercised its discretion in rejecting a statement from the company's financial officer as proof of its continuing ability to pay the proffered wage.

ORDER: The appeal is dismissed.