U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39982563

Date: NOV. 13, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an artist management firm, seeks to employ the Beneficiary as an international entertainment strategic specialist. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. See Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor an alien for lawful permanent resident status to work in a position that requires at least two years of training or experience. Id.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner had the ability to pay the proffered wage to the Beneficiary. SCOPS also denied a subsequent combined motion to reopen and reconsider on the same ground. 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.

A petitioner must establish its ability to pay the proffered wage from the priority date of the petition until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include annual reports, federal tax returns, or audited financial statements. *Id.* If a petitioner employs 100 or more workers, USCIS may accept a statement from a financial officer attesting to the petitioner's ability to pay the proffered wage. *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* 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).

II. ANALYSIS

The Petitioner, a single-member limited liability company (LLC), states on Form I-140 that it was established in 2009 and has 2 employees. It filed ETA Form 9089 with DOL on October 24, 2022, establishing the priority date for this petition, and stated that the proffered wage was $67,850 per year. With its initial filing, the Petitioner submitted copies of Schedule C of its sole member's (J-N-'s) IRS Form 1040 tax return for the years 2018-2022, reflecting a peak net income of $31,827 in 2020 and a net loss of $4,585 in 2022. The Petitioner did not indicate that it had employed the Beneficiary prior to filing the petition, nor did the record include any evidence to that effect.

In response to SCOPS' request for evidence, the Petitioner submitted additional documentation and asserted that when the totality of this evidence was considered, it had established its ability to pay the wage offered to the Beneficiary. Specifically, the Petitioner asserted that its reduced earnings and net income in 2021 and 2022 were due to uncharacteristic business losses due to the COVID-19 pandemic, and that a new contract under which the Beneficiary would provide services to a client would provide the income necessary for the Petitioner to pay his wages. But SCOPS pointed out in its initial decision that while the Petitioner's net income had been lower in 2021 and 2022 than in previous years, none of the tax returns showed sufficient income to pay the Beneficiary's offered wage. They also noted that the payments under the recently signed contract could not show the Petitioner's ability to pay the Beneficiary's wage beginning from the priority date.

On motion, the Petitioner continued to assert that when the totality of its circumstances are considered, the evidence is sufficient to show its ability to pay the Beneficiary. But now it had changed its explanation regarding its poor financial performance in 2021 and 2022 from the COVID-19 pandemic to J-N-'s member's health problems. New evidence included several articles published in music trade media containing J-N-'s biography, as well as reference letters about the Beneficiary's work as a singer/songwriter and his experience in artist tour management and promotion. While SCOPS acknowledged this evidence and noted that it showed J-N-'s years of experience in the music industry, they concluded that this was insufficient to overcome the lack of financial success reflected in the Petitioner's tax returns.

With its appeal brief, the Petitioner now submits additional evidence along with previously submitted evidence, and asks us t approve its petition on the Beneficiary's behalf. As a preliminary matter, we emphasize that this appeal relates to SCOPS's dismissal of the Petitioner's motion to reopen, not the denial of the underlying petition. Therefore, the question before us is whether SCOPS erred in dismissing the motion.

As noted in both of SCOPS' decisions, the J-N-'s tax returns do not show that the Petitioner has historically had revenues sufficient to pay the salary offered to the Beneficiary, even before the occurrences J-N- asserts led to reduced revenues in recent years. On appeal, the Petitioner draws parallels between its situation and history to that of the petitioner in *Sonegawa*, pointing to the articles mentioned above as evidence of J-N-'s reputation and experience in the music industry. But as we noted, those articles include only short biographies of J-N- and provide notification of a change in his employment. On the other hand, the decision in *Sonegawa* includes a quotation from a media article giving high praise to that petitioner's work, and also notes the appearance of her work in well-known magazines with national distribution. *Matter of Sonegawa*, 12 I&N Dec. at 615. The evidence here does not show that the media publishing J-N-'s employment notices have similar reach or reputation.

Other comparisons between the facts here and those presented in *Sonegawa* also fall short in supporting the Petitioner's ability to pay the Beneficiary's wage. While the decision in *Sonegawa* noted in multiple areas that petitioner's consistent employment of 4-8 workers, here the Petitioner does not indicate that it has ever had an employee other than J-N- prior to the Beneficiary. *Id.* Also, like the petitioner in *Sonegawa*, J-N- states in his letter submitted on appeal that he intends to continue operating the business by hiring the Beneficiary, but since his health problems continue to "keep [him] away from [the Petitioner]," it is not apparent that the Petitioner would continue to operate under his leadership or ownership. In addition, the Petitioner in *Sonegawa* had a single year of reduced revenues due to documented circumstances specific to its business, whereas here the Petitioner has not provided documentary evidence to support its assertions regarding the circumstances affecting its revenues or shown that its inability to generate sufficient revenues to pay the Beneficiary in 2022 and beyond was uncharacteristic. Accordingly, the Petitioner has not established that its expectations of increases in its business activity and profit based upon its previous activity, earnings, and reputation in the music industry are reasonable.

The new evidence submitted with the appeal includes payroll reports indicating that the Petitioner compensated the Beneficiary at the rate of $6,000 per month for the months of July and August 2025. Also, additional letters and other information regarding new clients said to have been garnered solely in anticipation of the Petitioner's employment of the Beneficiary are submitted. This includes a new engagement agreement with the same company that signed a previous agreement with the Petitioner that was submitted with the RFE response. A letter explains that the previous contract was cancelled due to delays in a product launch. The Petitioner asserts that the totality of the new evidence shows that the Beneficiary will generate $99,000 in income from July to December 2025.

However, like the evidence previously submitted, this new evidence does not address the shortfall in the Petitioner's ability to pay the Beneficiary's wage from the priority date of October 24, 2022 and continuing until the Beneficiary obtains lawful permanent residence as required per 8 C.F.R. § 204.5(g)(2). Further, we note that while the evidence suggests that the Petitioner has paid

the Beneficiary at a rate in excess of the proffered wage for the two most recent months before the filing of its appeal, this does not relieve it of the requirement to submit to submit initial evidence of its ability to pay in the form of either annual reports, federal tax returns, or audited financial statements for each year from the priority date forward. *See generally* 6 *USCIS Policy Manual* E.4(C)(1). The last year for which such evidence has been submitted is 2022.

For the reasons discussed above, we conclude that the Petitioner has not established that SCOPS erred in concluding that the totality of the evidence in the record does not establish that it has had the ability to pay the proffered wage to the Beneficiary from the priority date forward.

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.