U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40292263

Date: NOV. 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner operates a salon and spa, and seeks to employ the Beneficiary as salon manager. 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. § 1153(b)(3)(A)(i); *Merchant v. U.S. Att'y Gen.*, 461 F.3d 1375, 1378 n.3 (11th Cir. 2006). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage. On appeal, the company contends that SCOPS disregarded evidence that the business's reallocation of expenses will allow it to pay the proffered wage.

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 the company has not established its ability to pay at the time of the petition's filing. We will therefore dismiss the appeal.

I. LAW

Immigration as an EB-3 skilled worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and an alien's permanent employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. 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). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines 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)(B), (4).

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) of the Act, 8 U.S.C. § 1255(a).

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); *United States v. Jimenez*, 972 F.3d 1183, 1192 (11th Cir. 2020). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

When considering ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage for 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 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 cover 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. *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).[1]

The Petitioner's labor certification states the proffered wage of the offered salon manager job as $80,288 a year. The petition's priority date is June 19, 2023, 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).

At the time SCOPS issued its request for additional evidence in February 2025, regulatory required evidence of the Petitioner's ability to pay the proffered wage in 2024 was not yet available. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to submit "copies of annual reports, federal tax returns, or audited financial statements"). Thus, for purposes of this decision, we will consider the company's ability to pay in only 2023, the year of the petition's priority date.[2]

The Petitioner did not submit any evidence that it has paid the Beneficiary. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

The Petitioner submitted a copy of its federal income tax return for 2023. The tax return reflects net income of $8,571 and net current assets of $0.[3] Neither amount equals or exceeds the offered job's annual proffered wage of $80,288. Thus, based on examinations of the Petitioner's wages paid, net

[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); *Beauty Cafe USA, Inc. v. Richardson*, No. 20-61563-CIV, 2021 WL 5353731, at *3 (S.D. Fla. Sept. 17, 2021).

[2] In any future filings in this matter, the Petitioner must also submit evidence of its ability to pay the proffered wage in 2024 and, if available, 2025. *See* 8 C.F.R. § 204.5(g)(2) ("The petitioner must demonstrate this ability … continuing until the beneficiary obtains lawful permanent residence.")

[3] Net current assets equal current assets minus current liabilities. Jae K. Shim & Joel G. Siegel, *Barrons Dictionary of Accounting Terms*, 117 (3d ed. 2000). SCOPS found that the Petitioner's 2023 net current assets totaled $13,377. But Schedule L of the company's tax return for that year lists both current assets and current liabilities as $13,377. Thus, subtraction of current liabilities from current assets indicates that the Petitioner's 2023 net current assets equal $0.

income, and net current assets, the company has not demonstrated its ability to pay the proffered wage in 2023.

On appeal, the Petitioner contends that SCOPS disregarded evidence that the business will reallocate its salon management expenses, purportedly allowing it to pay the proffered wage to the Beneficiary. A copy of a January 2023 services agreement shows that the Petitioner contracted to pay another company $82,000 a year to manage the Petitioner's salon. Copies of IRS Forms 1099-NEC, Nonemployee Compensation, indicate that the Petitioner paid the contractor $83,862.54 in 2023 and $91,059.46 in 2024.[4] The Petitioner submitted copies of corporate resolutions stating that, upon the agreement's expiration in January 2026, the Petitioner will not renew the contract and will instead begin paying the Beneficiary the annual proffered wage of $80,288 to manage the salon.[5] A corporate resolution states that "this reallocation does not create any new or additional financial obligations for the Company but represents a strategic redirection of existing operational expenses."

When assessing ability to pay, USCIS may consider a beneficiary's replacement of an outsourced service. 6 *USCIS Policy Manual* E.4(C)(3). But the Petitioner's plan for the Beneficiary to assume management of its salon in January 2026 does not demonstrate its ability to pay the proffered wage. As SCOPS noted, the company must establish its ability to pay from June 19, 2023, the petition's priority date. *See* 8 C.F.R. § 204.5(g)(2) ("The petitioner must demonstrate this ability *at the time the priority date is established.*") (emphasis added). Thus, the Petitioner has not explained how its planned January 2026 reallocation of expenses demonstrates its ability to pay at the time of the petition's June 2023 priority date.

The Petitioner argues that SCOPS disregarded "the totality of [the company's] financial resources." The company contends that the record shows its "consistent operational revenues and positive cash flow" and its "successful business operations since establishment."

As previously indicated, USCIS may consider factors beyond a petitioner's wage payments, net income, and net current assets when considering ability to pay. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15. Under *Sonegawa*, USCIS may consider: the number of years a petitioner has conducted business; its number of employees; its business growth; its reputation in its industry; and its incurrence of unexpected losses or expenses. *Id.*

The record does not establish when the Petitioner commenced business. On the Form I-140, Immigrant Petition for Alien Workers, and the accompanying labor certification application, the company stated that its business opened in July 2010. On appeal, however, the business states its establishment in August 2020. Also, as previously indicated, copies of quarterly payroll tax returns indicate that, since the fourth quarter of 2023, the company has employed one person.

Further, the Petitioner's 2023 income tax return is the only one it submitted. The company did not submit tax returns for prior or later years. Thus, contrary to the company's claims, the record does not demonstrate its "consistent operational revenues and positive cash flow" or its "successful business

[4] The record does not explain why the Petitioner, in 2023 and 2024, paid the contractor more than the $82,000 specified in the agreement.

[5] If the Beneficiary lacks authorization to work in the United States at that time, the Petitioner would have to employ someone else to manage its salon until the Beneficiary may legally do so.

operations since establishment." Also, the Petitioner has not established any growth of its business, its reputation in its industry, or its incurrence of unexpected losses or expenses. Thus, based on a totality of the circumstances under *Sonegawa*, the company has not demonstrated its ability to pay the proffered wages.[6]

III. CONCLUSION

The Petitioner has not demonstrated its ability to pay the offered job's proffered wage. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This is the final decision in this matter. A motion's filing would not postpone the decision's effect. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. *See* section 240 of the Act, 8 U.S.C. § 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for future U.S. visas or other immigration benefits.

[6] Although unaddressed by SCOPS, the Petitioner also has not demonstrated its intent to employ the Beneficiary in the offered job. *See* section 204(a)(1)(F) of the Act (requiring a petitioning employer to "desir[e] and intend[]" to employ an alien in an offered job). On the ETA Form 9141, Application for Prevailing Wage Determination, the company indicated that the offered salon manager job involves supervising other employees, including hairdressers, hair stylists, cosmetologists, and shampooers. As previously indicated, copies of the Petitioner's federal quarterly payroll tax returns state the company's employment of one person. The company has not demonstrated its intent to employ the Beneficiary in the offered job, which involves supervision of multiple workers. SCOPS did not notify the Petitioner of this evidentiary deficiency or provide the company with an opportunity to respond. We therefore will not affirm the petition's denial on this ground. But, in any future filings in this matter, the Petitioner must demonstrate its intent to employ the Beneficiary in the offered job, which, as stated on the application for a prevailing wage determination, involves supervising multiple salon workers.