U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43947670

Date: SEPT. 3, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a healthcare staffing agency, seeks to employ the Beneficiary as a "caring partner" to provide non-clinical aid to patients. 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' training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

U.S. Citizenship and Immigration Services (USCIS) denied the petition. The Acting Associate Director of Service Center Operations concluded that the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage.

On appeal, 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 the Director did not clearly analyze the company's "successor-in-interest" claim or properly consider the company's ability to pay within the claim's context. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as an other, or unskilled, worker generally follows a three-step process. First, to permanently fill a job in the United States with a foreign worker, a prospective employer must obtain DOL certification that: there are insufficient U.S. workers able, willing, qualified, and available for the offered job; and an alien's employment in the job would not harm wages or working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, a prospective 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); 8 C.F.R. § 204.5(a). Among other things, USCIS determines whether

an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. *See* 8 C.F.R. § 204.5(l)(3)(i), (ii)(C).

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 of the Act, 8 U.S.C. § 1255.

II. BACKGROUND

In May 2023, a healthcare staffing company filed the labor certification application for the offered caring partner job. The labor certification employer sought to permanently employ the Beneficiary in the offered job. DOL approved the labor certification application in June 2024.

The Petitioner states that, a few weeks later, it merged with the labor certification employer. The labor certification employer reportedly ceased to exist, and the Petitioner survived the merger holding all the labor certification employer's rights and obligations.

The Petitioner filed this petition in November 2024, asserting itself as the labor certification employer's successor in interest. A successor in interest is "someone who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor." *See successor in interest*, Black's Law Dictionary (11th ed. 2019); *see generally* 6 *USCIS Policy Manual* E.3(E), www.uscis.gov/policy-manual. In April 2026, the Director denied the petition, concluding that the Petitioner did not demonstrate its required ability to pay the proffered wage.

Because the Petitioner is not the same entity that filed the labor certification application for the offered job, to use the labor certification for this particular job opportunity, the Petitioner must establish itself as the labor certification employer's successor in interest. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986); *see generally* 6 *USCIS Policy Manual* E.3(A).

To establish itself as a successor, the Petitioner must:

- Demonstrate that it offers the same job originally stated on the labor certification;
- Establish that, by the petition's priority date, it and the alien met all petition eligibility requirements, including the ability of it and the labor certification employer to pay the job's proffered wage; and
- Fully describe and document its assumption of the predecessor's ownership.

See Matter of Dial Auto, 19 I&N Dec. at 482-83; *see generally* 6 *USCIS Policy Manual* E.3(F).

The Director did not clearly analyze the Petitioner's successor-in-interest claim and should do so on remand, including analyzing the original labor certification employer's ability to pay as stated more fully below.

III. ANALYSIS

A. Ability to Pay the Proffered Wage

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 of ability to pay must generally include copies of a business's annual reports, federal tax returns, or audited financial statements. *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.")[1]

The labor certification states the proffered wage of the offered caring partner job as $13.53 an hour, or, based on a 40-hour work week, $28,142.40 a year. The petition's priority date is May 10, 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).

The Director found that the Petitioner did not demonstrate its ability to pay the proffered wage in 2023, the year of the priority date, or 2024. Under this case's facts, however, the labor certification employer – not the Petitioner – had to establish its ability to pay in 2023.

To demonstrate the ability of it and the labor certification employer to pay the proffered wage, the Petitioner must establish the labor certification employer's ability to pay from the petition's May 10, 2023 priority date until the June 26, 2024 merger, which purportedly transferred the business's ownership to the Petitioner. *See Matter of Dial Auto*, 19 I&N Dec. at 482; *see generally* 6 *USCIS Policy Manual* E.3(F)(2). The Petitioner must also demonstrate its own ability to pay from the June 26, 2024 merger until the Beneficiary obtains lawful permanent residence. *Matter of Auto Dial*, 19 I&N Dec. at 482-83; *see generally* 6 *USCIS Policy Manual* E.3(F)(2).

The Director did not consider the labor certification employer's ability to pay from the May 10, 2023 priority date to June 26, 2024. We will therefore remand the matter.

On remand, the Director must consider the labor certification employer's ability to pay the proffered wage from the petition's May 10, 2023 priority date until the June 26, 2024 merger and the Petitioner's ability to pay thereafter. The Director should also ask the Petitioner to submit regulatory required evidence of its ability to pay in 2025. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay "continuing until the beneficiary obtains lawful permanent residence"). Further, the Director should notify the Petitioner of the following derogatory information.

B. Multiple Form I-140 Beneficiaries

USCIS records indicate that the Petitioner has filed Forms I-140, Immigrant Petitions for Alien Workers, for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage

[1] If a prospective U.S. employer has at least 100 employees, USCIS may accept a statement from a financial officer of the employer in lieu of the normal regulatory required evidence. 8 C.F.R. § 204.5(g)(2); *see generally* 6 *USCIS Policy Manual* E.4(A). Here, the Petitioner does not claim that it has at least 100 workers.

of each petition it files, from a petition's priority date until a beneficiary obtains U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay the combined proffered wages of this and its other petitions that remained pending or approved after the June 26, 2024 merger date. *See Patel v. Johnson*, 2 F. 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 pending petitions); *see generally* 6 *USCIS Policy Manual* E.4(D)(2) ("In cases necessitating analysis of the ability to pay multiple beneficiaries, the 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.")[2]

USCIS records show that the Petitioner filed 29 Forms I-140 for other beneficiaries that remained pending or approved after the June 26, 2024 merger date.[3] The record does not indicate the petitions' proffered wages or whether the Petitioner paid wages to any of the other beneficiaries. USCIS therefore cannot accurately determine the Petitioner's ability to pay the combined proffered wages.

USCIS records also indicate that the labor certification employer filed Form I-140 petitions for four other beneficiaries that remained pending or approved after the petition's May 10, 2023 priority date and before the June 26, 2024 merger date.[4] Thus, the Petitioner must demonstrate, and the Director must consider, the labor certification employer's ability to pay the combined proffered wages of this and the other four petitions during the relevant period.

On remand, the Director should notify the Petitioner of the additional petitions, request it to provide their proffered wages and evidence of any payments to their beneficiaries, and afford it a reasonable opportunity to respond.

IV. CONCLUSION

The Director must determine the labor certification employer's ability to pay the proffered wage from the petition's May 10, 2023 priority date until the June 26, 2024 merger, and the Petitioner's ability to pay thereafter. The Petitioner must additionally establish its ability to pay in 2025; and the ability of it and the labor certification employer to pay the combined proffered wages of the additional pending Form I-140s.

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[2] The Petitioner need not demonstrate its ability to pay combined proffered wages of petitions that the business withdrew or that USCIS rejected, denied, or revoked. *See generally* 6 *USCIS Policy Manual* E.4(D)(2). The company also need not establish its ability to pay combined proffered wages of petitions before their priority dates or after their beneficiaries have obtained U.S. permanent residence. *Id.*

[3] USCIS records identify the Petitioner's 29 other petitions by the following receipt numbers: [redacted]

[4] USCIS records identify the four other petitions by the following receipt numbers: [redacted]

ORDER: The decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.