



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 27466361

Date: JUL. 14, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a computing products and services business, seeks to employ the Beneficiary as a systems engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the employment-based second preference (EB-2) immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner has the ability to pay the proffered wage.¹ The matter is now before us on appeal. 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 sustain the appeal.

Under 8 C.F.R. § 204.5(g)(2), any petition filed for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage from the time the priority date is established continuing until the beneficiary obtains permanent residence.² Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective U.S. employer employs 100 or more workers, U.S. Citizenship and Immigration Services (USCIS) may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The record demonstrates that the Petitioner employs 100 or more workers. The Petitioner also submitted a letter from its chief operating officer and copies of the Beneficiary's IRS Forms W-2 and earnings statements showing that it has paid him a salary that meets or exceeds the proffered wage since the priority date.

¹ More specifically, the Director determined the Petitioner did not submit any of the primary initial evidence required by 8 C.F.R. § 204.5(g)(2).

² For EB-2 petitions accompanied by a labor certification, the priority date is the date the labor certification was filed and accepted for processing with the Department of Labor. *See* 8 C.F.R. § 204.5(d).

On appeal, the Petitioner contends that the Director improperly discounted the provided letter and emphasizes that the regulation at 8 C.F.R. § 204.5(g)(2) “clearly indicates that *a* financial officer, regardless of formal title within the company, can provide a statement establishing the company’s ability to pay the proffered wage.” The Petitioner, which has since hired a president and chief financial officer, also provides a new letter in support of the ability to pay requirement.

Upon review, we conclude that the Petitioner has provided the initial evidence required by 8 C.F.R. § 204.5(g)(2) and has established, by a preponderance of the evidence, its ability to pay the Beneficiary’s proffered wage. Based on the facts and explanation provided, the submitted letter may be considered to be from “a financial officer.” As all other eligibility requirements for the requested classification have been satisfied, we will withdraw the Director’s decision and sustain the appeal.

ORDER: The appeal is sustained.