



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

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

In Re: 20236363

Date: JULY 15, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner seeks to employ the Beneficiary as an application analyst under the third-preference, immigrant classification for professional workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based category allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status. The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding the Petitioner did not establish it possessed the ability to pay the proffered wage. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

Immigration as a professional usually follows a three-step process. First, the prospective employer must obtain a labor certification approval from the U.S. Department of Labor (DOL) to establish that there are not sufficient U.S. workers who are available for the offered position. Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). Second, the employer must submit the approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. The immigrant visa petition must establish the foreign worker qualifies for the offered position, the foreign worker and the offered position are eligible for the requested immigrant classification, and the employer has the ability to pay the proffered wage. *See* 8 C.F.R. § 204.5.<sup>1</sup> Finally, if USCIS approves the immigrant visa petition, the foreign worker may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

Evidence of ability to pay must generally include annual reports, federal tax returns, or audited financial statements. 8 C.F.R. § 204.5(g)(2). 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

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<sup>1</sup> These requirements must be satisfied by the priority date of the immigrant visa petition. *See* 8 C.F.R. § 204.5(g)(2), *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). For petitions that require a labor certification, the priority date is the date on which the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d). In this case, the priority date is November 3, 2010.

wage. *Id.* In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by USCIS. *Id.*

In determining ability to pay, USCIS first determines whether the petitioner paid the beneficiary the full proffered wage each year from the priority date. If the petitioner did not pay the proffered wage in any given year, USCIS next determines whether the petitioner had sufficient net income or net current assets to pay the proffered wage (reduced by any wages paid to the beneficiary).<sup>2</sup>

The Director only questioned the Petitioner's ability to pay the Beneficiary's offered wages in 2017. The offered wages on the labor certification were \$86,500 and in 2017 the Beneficiary's compensation was \$76,944, resulting in a deficit of \$9,556. The Petitioner's net income and net current assets were both insufficient to make up for the deficit. In cases such as this, if net income and net current assets are insufficient, USCIS has the option to consider other relevant factors, such as the number of years the petitioner has been in business, the size of its operations, the growth of its business over time, its number of employees, the occurrence of any uncharacteristic business expenditures or losses, its reputation within its industry, or whether a beneficiary will replace a current employee or outsourced service, and any other evidence that USCIS deems relevant to a petitioner's ability to pay the proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614–15 (Reg'l Comm'r 1967).

On appeal, the Petitioner highlights the credible documentation in the record demonstrating its reputation in its industry, its longevity and success as an international technology-enabled payment processing services provider, and its payment of substantial annual wages to its sizeable staff. Considering the totality of the circumstances under the *Sonegawa* decision, we conclude the Petitioner has established its ability to pay the proffered wage by a preponderance of the evidence.

**ORDER:** The appeal is sustained.

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<sup>2</sup> If a petitioner has filed immigrant visa petitions on behalf of multiple beneficiaries, the petitioner must establish that it has had the ability to pay the proffered wage to each beneficiary. Petitions filed on behalf of other beneficiaries are considered from the priority date of each petition (not including any year prior to the priority date of the petition being reviewed on appeal) until the present or until the other beneficiary obtains lawful permanent residence. Petitions that have been withdrawn or denied are not considered in this analysis.