



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

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

In Re: 1614222

Date: MAY 31, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner - an owner, operator, and developer of hotels - seeks to employ the Beneficiary as a housekeeper. The company requests her classification under the third-preference, immigrant visa category for “other workers.” Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner misrepresented the minimum job requirements of the offered position on the application for the accompanying certification from the U.S. Department of Labor (DOL).

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an “other,” or “unskilled,” worker generally follows a three-step process. First, a prospective employer must obtain DOL certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l).

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. THE JOB REQUIREMENTS

The Director found that the Petitioner misrepresented the minimum, job requirements of the offered position on the accompanying labor certification application. The Director, however, did not explain his legal authorization for determining the position's minimum job requirements. We will therefore withdraw the Director's decision.

## III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the Petitioner has not established its required ability to pay the position's proffered wage. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

The accompanying labor certification states the proffered wage of the offered position of housekeeper as \$18,013 a year. The petition's priority date is April 17, 2017, 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 Petitioner submitted copies of its federal income tax returns for 2012 through 2016. At the time of the appeal's filing, regulatory required evidence of the Petitioner's ability to pay the proffered wage in 2017, the year of the petition's priority date, or thereafter was not yet available. Thus, contrary to 8 C.F.R. § 204.5(g)(2), the record does not establish the Petitioner's ability to pay the proffered wage from the petition's priority date.

Also, USCIS records indicate the Petitioner's filing of Form I-140 petitions for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner must therefore demonstrate its ability to pay the combined proffered wages of this petition and any others that were pending or approved as this petition's priority date of April 17, 2017 or filed thereafter. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our revocation of a petition's approval where, as of the filing's grant, the petitioner did not demonstrate its ability to pay combined proffered wages of multiple petitions).<sup>1</sup>

The Director did not inform the Petitioner of these evidentiary deficiencies. We will therefore remand the matter.

On remand, the Director should ask the Petitioner to submit copies of annual reports, federal tax returns, or audited financial statements for 2017 through 2022. *See* 8 C.F.R. § 204.5(g)(2). The Petitioner must also provide the proffered wages and priority dates of its other petitions that were pending or approved as of April 17, 2017 or filed thereafter. The Petitioner may submit additional

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<sup>1</sup> The Petitioner need not demonstrate its ability to pay proffered wages of petitions that it withdrew or - unless pending on appeal or motion - that USCIS rejected, denied, or revoked. The Petitioner also need not demonstrate its ability to pay proffered wages of petitions before their respective priority dates or after their corresponding beneficiaries obtained lawful permanent residence.

evidence of its ability to pay, including proof of any wages paid to applicable beneficiaries in relevant years or materials supporting the factors stated in *Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

If supported by the record, the Director may notify the Petitioner of any other potential denial grounds. The Director, however, must afford the company a reasonable opportunity to respond to all issues raised on remand. *See* 8 C.F.R. § 103.2(b)(8)(iv). Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

#### IV. CONCLUSION

The Director did not explain the legal authorization for his denial of the petition. The Petitioner, however, has not established its continuing ability to pay the proffered wage of the offered position from the petition's priority date onward.

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