



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

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

In Re: 29315291

Date: OCT. 6, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, an auto body shop, seeks to permanently employ the Beneficiary as its executive director under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish: (1) that the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (2) the Petitioner's ability to pay the Beneficiary's proffered wage.

The Petitioner appealed the decision under 8 C.F.R. § 103.3. We rejected the appeal as untimely under 8 C.F.R. § 103.3(a)(2)(v)(B)(1), and rejected the Petitioner's motion to reopen because there is no provision to permit a petitioner to file a motion on a rejected appeal. But we reopened the appeal on our own motion under 8 C.F.R. § 103.5(a)(5) because the appeal had been filed timely, and the rejection had been in error.

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 dismiss the appeal.

I. LAW

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding

the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. ANALYSIS

In an employment-based immigrant petition that requires a job offer, the petitioning employer must establish its ability to pay the proffered wage from the time the priority date is established until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). To establish its ability to pay, a petitioner must submit annual reports, federal tax returns, or audited financial statements. *Id.*

When determining ability to pay, U.S. Citizenship and Immigration Services (USCIS) examines whether a petitioner paid a beneficiary the full proffered wage each year, beginning with the year of a petition's priority date. 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 pay any differences between the proffered wage and wages paid. If net income and net current assets are insufficient, USCIS may also consider other factors affecting a petitioner's ability to pay a proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

The Beneficiary established an insurance brokerage in Venezuela in 1992, and since that time has served as its general director. The Beneficiary established the petitioning entity in 2014, and has worked for the Petitioner since 2018 in L-1A nonimmigrant status. The Petitioner filed the petition on March 20, 2020, and therefore must establish its ability to pay the Beneficiary's proffered wage of \$60,000 per year from that date forward. We agree with the Director's conclusion that the Petitioner has not established its ability to pay the Beneficiary's proffered wage.

On Form I-140, the Petitioner claimed net annual income of \$169,723, but the record does not support that assertion. At various times in this proceeding, the Petitioner has submitted copies of its federal income tax returns for 2017 through 2021. The three most recent returns show the following amounts:

| Year | 2019 | 2020 | 2021 |
|------------------------|-----------|--------|--------|
| Taxable income or loss | -\$10,585 | \$0 | \$0 |
| Net current assets | 29,558 | 29,352 | 30,468 |
| Salaries and wages | 127,999 | 75,354 | 70,950 |

The Petitioner has also submitted balance sheets and profit and loss statements for 2019 and 2020. These statements are not audited financial statements as the Petitioner claims; they include disclaimers specifying that no audit took place. Many of the figures coincide with the tax returns, but the 2020 balance sheet claims \$449,691 in net current assets, because the balance sheet includes \$95,000 in "[l]oans to shareholders" and \$315,514 in "[o]ther investments" under current assets, whereas the tax return showed those amounts as longer-term assets.¹

¹ Given these inconsistent descriptions of which of the Petitioner's assets count as "current assets," another irregularity bears noting. On every tax return in the record, dating back to 2017, the Petitioner has reported a \$15,077 "rental security deposit" on an unspecified property as a current asset. "Current assets are assets expected to be converted to cash, sold,

The Director denied the petition, stating that the Petitioner's 2019 and 2020 income tax returns do not show sufficient net income or net current assets to pay the Beneficiary's proffered salary of \$60,000 per year. The Director also addressed the Beneficiary's past compensation, which we will address further below. We note that the Petitioner claimed seven employees at the time of filing and eight employees on appeal, whose claimed aggregate salaries total more than \$250,000 per year. On its income tax returns, the Petitioner has consistently reported salary payments well below that amount.

On appeal, the Petitioner submits or resubmits copies of its tax returns and other documents. The Petitioner does not discuss the figures on these documents or explain how they establish that the Petitioner has consistently been able to pay the Beneficiary's proffered salary of \$60,000 per year since the petition's filing date in March 2020.

In the decision, the Director noted that the Petitioner had employed the Beneficiary before and since the filing date, but apparently paid the Beneficiary less than the proffered wage. The Director also stated that the Petitioner's net income and net current assets were insufficient, as demonstrated above, to pay the Beneficiary's proffered wage. The Director did not address the question of whether or not the Petitioner's net income or net current assets were sufficient to cover the difference between the Beneficiary's full salary and the amount actually paid to him.

Review of the record shows that the Petitioner has provided inconsistent evidence and information relating to its past salary payments to the Beneficiary. These inconsistencies raise questions of credibility. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner's initial submission included copies of purported pay receipts for the Beneficiary for the period from June 7 to December 19, 2019, prepared by a contracted payroll service. The statements, listing checks numbered between 10278 and 10448, show payments every two weeks, consistently reflecting gross pay of \$2,307.69 and net pay of \$1,983.88. The Beneficiary's last pay statement for the year, issued December 20, 2019, shows gross pay of \$57,692.25 for the year, an amount equivalent to 25 payments of \$2,307.69 each. One more paycheck would put the yearly total within a few cents of the proffered \$60,000.

But other documents submitted at the same time cast doubt on these pay statements. The Petitioner's initial submission included federal and state quarterly reports showing the total wages that the Petitioner paid during each of the first three quarters of 2019. The Florida reports also show the wages paid to each employee. The Florida reports show gross wages paid to the Beneficiary totaling \$12,471.12 in the first quarter; \$21,585.20 in the second quarter; and \$2,600.00 in the third quarter. The Florida third quarter report and corresponding federal quarterly return indicate that the Petitioner paid a total of \$6,527.50 in gross wages to all its employees between July and September 2019.² The

or consumed during the next twelve months." Jay Alix & Elmer E. Heupel, *Financial Handbook for Bankruptcy Professionals* § 9.2, at 354 (1991), quoted in *Asset*, Black's Law Dictionary (11th ed. 2019). The Petitioner changed its address in early 2020 but has continued to claim the same security deposit as a current asset.

² The federal quarterly return indicates that seven employees "received wages" during the quarter, but the Florida counterpart shows payments to only three employees, one of whom is the Beneficiary. Three other employees are listed with the amount "0," and a seventh employee shown during other quarters is not listed on the third quarter report.

stated third quarter sum of \$2,600 is not consistent with the pay receipts referenced above that purport to indicate that the Petitioner paid the Beneficiary \$16,153.83 in gross wages during that same quarter.

Bank statements from 2019, submitted at the same time as the above pay statements, do not show that the checks corresponding to the pay statements were actually presented for payment. For instance, a pay statement from June 2019 shows check number 10278, in the amount of \$1,983.88. The June 2019 bank statements shows payments for checks numbered 10277 and 10279, but not 10278. The statement does not show any other form of withdrawal or debit in the amount of \$1,983.88.

In a request for evidence (RFE), the Director requested further evidence of the Beneficiary's past salary payments. The Petitioner's response included a new set of purported pay statements dated between January 2019 and December 2020. The Beneficiary's purported 2019 pay receipts submitted in response to the RFE are entirely different from those submitted with the initial filing of the petition. The newly submitted statements show weekly payments in varying amounts instead of biweekly payments in consistent amounts, and some show different names for the petitioning employer. As an illustrative example, the Petitioner has submitted two different pay receipts for the Beneficiary, both dated September 27, 2019. The receipts show the following information:

| | Initial submission | RFE response |
|-------------------------|--------------------|--------------|
| Payroll check number: | 10367 | 50004 |
| Period starting: | 09/13/2019 | 09/20/2019 |
| Period ending: | 09/26/2019 | 09/26/2019 |
| Pay Date: | 09/27/2019 | 09/27/2019 |
| Gross pay this period: | \$2,307.69 | \$900.00 |
| Gross pay year to date: | \$43,846.11 | \$24,185.20 |
| Net pay: | \$1,983.88 | \$698.07 |

The receipts also show two different variations of the name of the petitioning company, and two different "company codes."

The September 2019 bank statement in the record does not show any five-digit check numbers starting with "1." The statement also shows a gap between the checks numbered 50003 and 50005. It does not show payments or withdrawals in the amount of \$1,983.88 or \$698.07.

Also regarding the purported pay statements submitted in response to the RFE, the year-to-date figures on the last-dated statements from each year indicate that the Petitioner paid the Beneficiary gross wages totaling \$31,271 in 2019 and \$70,500 in 2020. The last pay statements from 2020 indicate that, as of December 18th, the Petitioner had paid the Beneficiary \$36,063 during the year. There are two pay statements dated December 24th, one showing gross pay of \$1,500, the other showing a much larger payment of \$32,937. The large payment at the end of the year, made after the Director issued the RFE in November 2020, does not establish that the Petitioner was able to pay the Beneficiary the full proffered wage at the time of filing in March 2020 and continuously thereafter.

The new set of pay statements submitted in response to the RFE generally reflects weekly payments in 2020, but there are some gaps. The longest gap is between the statements dated February 21 and May 22, 2020. Year-to-date sums on each statement indicate that the Beneficiary received no pay

statements between those two dates. There is only one pay statement from August 2020, and two from September.

It is the petitioner's responsibility and burden to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth, in fact, lies. *See Matter of Ho*, 19 I&N Dec. at 591-92. A petition can only be properly approved upon a determination that the facts stated in the petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The existence of two different sets of pay statements for the Beneficiary, neither of which is corroborated by bank statements in the record, raises significant questions. Those same bank statements include images of cashed checks, which, in turn, reflect a *third* set of payments to the Beneficiary under two different variations of his name (with and without his middle name). The checks add up to nearly \$70,000 apparently paid to the Beneficiary between January and September 2019. There is no explanation for the purpose of these checks. They do not appear to be salary checks, because they do not match the dates and amounts on the pay statements, and nearly all the checks are in multiples of \$100, whereas the reported pay statements show non-rounded amounts consistent with withholding of taxes. Whatever the purpose of the checks, the bank statements date from before the filing date and therefore do not show payments to the Beneficiary at or after the time of filing.

The Petitioner's response to the RFE included a copy of IRS Form W-2, Wage and Tax Statement, indicating that the Petitioner paid the Beneficiary \$31,271 in 2019, an amount slightly over half the proffered wage. This amount is consistent with the second set of purported 2019 pay statements. It does not reflect the payments shown in the first set of purported 2019 pay statements, nor does it reflect the checks to the Beneficiary shown in the bank statements.

With respect to 2020, the Petitioner's response to the RFE also included a payroll summary indicating that the Petitioner paid the Beneficiary \$19,713 from January 1 to July 10, 2020. This is consistent with the year-to-date figure on the July 10 pay statement in the Petitioner's response to the RFE, indicating a rate of pay substantially below the proffered wage.

The Director issued a notice of intent to deny the petition (NOID), stating that the evidence described above shows that the Petitioner paid the Beneficiary substantially less than the proffered wage in 2019 and 2020.

In response to the NOID, the Petitioner submitted an uncertified copy of IRS Form W-2c, Corrected Wage and Tax Statement, claiming that the Petitioner had paid the Beneficiary \$62,601 in 2019. The Petitioner did not submit evidence that it had filed this form with the Internal Revenue Service (IRS). This newly-claimed amount does not match either set of purported pay statements or the checks shown in the bank statements. The Director noted "[t]he overall irregular pattern of payments" in the NOID, but in its response, the Petitioner did not explain why it has submitted so many different versions of the Beneficiary's wages from 2019. The Petitioner did not submit sufficient evidence to resolve the discrepancies as required by *Matter of Ho*, 19 I&N Dec. at 591-92.

The Petitioner also submitted the Beneficiary's amended individual tax return, adding \$31,330 to his claimed income for 2019. The Petitioner did not show that the Beneficiary filed this amended return with the IRS. The return in the record is not a copy; it includes original signatures in ballpoint pen. Additionally, the 2019 tax is for the year before to the priority date, and would not evidence payment of wages from the priority date onward.

The Petitioner's tax returns from 2020 and 2021 do not show any net income, and they do not show sufficient net current assets to cover the Beneficiary's full salary from the time of filing onward. The Beneficiary's pay receipts from 2021 do not establish ability to pay in 2020. The Petitioner claims to have paid the Beneficiary at least a partial salary since the time of filing, but when put on notice of the deficiency, the Petitioner submitted evidence that conflicts with the evidence submitted previously. The Petitioner has not submitted objective, independent evidence to show how much it actually paid the Beneficiary in salaries and wages in 2019 and 2020. Although 2019 was before the filing date, the many substantial inconsistencies in the evidence from that year reflect on the Petitioner's overall credibility.

The bank statements document some cashed checks payable to the Beneficiary in 2019, but the Petitioner has not established or claimed that the cashed checks shown in the bank statements represent wage or salary payments.

The Petitioner's net income and net current assets are insufficient to establish the Petitioner's ability to pay the proffered wage. As shown above, there are many unexplained inconsistencies in the Petitioner's evidence regarding the Beneficiary's compensation. These inconsistencies prevent us from conducting a full *Sonegawa* analysis of the various factors influencing the Petitioner's ability to pay the proffered wage. We cannot conclude that the Petitioner has met its burden of proof to establish that its payments to the Beneficiary, whether viewed separately, or added to either the Petitioner's net income or its net current assets, equal or exceed the proffered wage from the March 2020 filing date onward.

The above conclusions are sufficient to determine the outcome of the appeal. Therefore, we reserve argument on the remaining question of whether the Petitioner seeks to employ the Beneficiary in a managerial or executive capacity.³

III. CONCLUSION

We will dismiss the appeal because the Petitioner has not submitted credible and consistent evidence to show its ability to pay the Beneficiary's proffered wage from the filing date onward.

ORDER: The appeal is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).