



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

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

In Re: 8144322

Date: APR. 29, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a senior software developer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's continuing ability to pay the proffered wage. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen and the motion to reconsider.

I. MOTION REQUIREMENTS

A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. BACKGROUND

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date¹ until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The proffered

¹ The petition's priority date is December 16, 2016, the date the U.S. Department of Labor accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

wage in this case is \$112,000 per year. Evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.* In determining a petitioner's ability to pay, we first examine whether it paid a beneficiary the full proffered wage each year from a petition's priority date. In our prior decision, we calculated that the Petitioner must demonstrate its ability to pay \$26,870.30 in 2016 and \$25,818.20 in 2017, the differences between the annual proffered wage and the amounts the Petitioner paid to the Beneficiary in the respective years.²

We next examined whether the Petitioner had sufficient annual amounts of net income or net current assets to pay the difference between the proffered wage and the wages paid. We determined that the record did not establish the Petitioner's ability to pay the differences between the proffered wage and the amounts it paid the Beneficiary in 2016 or 2017 based on its net loss or net current liabilities each year.

Further, where a petitioner has filed petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). We determined that the Petitioner did not establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.

Finally, we analyzed the totality of the Petitioner's circumstances in reviewing its ability to pay multiple beneficiaries. *See Matter of Sonogawa*, 12 I&N Dec. 612, 614-615 (Reg'l Comm'r 1967). We determined that a totality of the circumstances did not establish the Petitioner's ability to pay the proffered wage.

III. ANALYSIS

The primary issue to be addressed in this decision is whether the Petitioner has submitted new facts that overcome our prior decision, or offered legal arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or policy with respect to the facts of this case.

On motion, the Petitioner submits its 2018 IRS Form 1120S, U.S. Income Tax Return for an S Corporation. It shows that the Petitioner has sufficient net income to pay the difference between the proffered wage and the wages it paid to the Beneficiary in 2018. However, as noted in our prior decision, the Petitioner has not established its ability to pay differences between the proffered wage and the amounts it paid the Beneficiary in 2016 or 2017 based on its net income, net current assets, or the totality of the circumstances. Further, in our prior decision, we noted that the Petitioner did not submit crucial information regarding the other petitions it has filed, including the proffered wages of 31 other petitions that it identified in response to the Director's request for evidence. We also noted that the Petitioner failed to submit any information about an additional 14 petitions that it had filed. On motion, it submits no additional information regarding these petitions or additional petitions that it has filed since the appeal. We are therefore unable to calculate the Petitioner's ability to pay the

² As of the date of the appeal's filing, required evidence regarding the Petitioner's ability to pay in 2018 was not available.

combined proffered wages of all applicable petitions in any relevant year. Thus, the Petitioner's 2018 federal tax return does not overcome our prior decision.

On motion, the Petitioner also submits its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first two quarters of 2019. The return for the first quarter states that the Petitioner paid 13 employees, and the return for the second quarter states that it paid 11 employees. On motion, the Petitioner asserts that these documents show that its "current payroll obligations are being met." However, the Petitioner does not indicate how the 2019 payroll information establishes its ability to pay from the priority date in 2016 onward. Further, the 2019 payroll information demonstrates a significant decrease in the 48 employees that the Petitioner reported on the petition filed in October 2018 and casts doubt on the Petitioner's assertions regarding its workforce. Discrepancies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the Petitioner's 2019 quarterly federal tax returns do not overcome our prior decision.

On motion, the Petitioner cites *Matter of Sonogawa*, 12 I&N Dec. 612, for the proposition that the Petitioner's net current assets should be considered as evidence of the Petitioner's ability to pay. Net current assets are the difference between a petitioner's current assets and current liabilities.³ Here, net current assets were considered as part of our review of the Petitioner's ability to pay,⁴ but we found that the Petitioner had net current liabilities that were insufficient to pay the wage deficiency in 2016 and 2017.

The Petitioner further states on motion that its tax returns for 2016 and 2017 showed total assets of \$2,514,668 and \$2,259,789, respectively. However, the Petitioner's total assets include depreciable assets that the Petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the Petitioner's total assets must be balanced by its liabilities. Otherwise, they cannot properly be considered in the determination of the Petitioner's ability to pay the proffered wage. Thus, the Petitioner's total assets do not establish its ability to pay in 2016 and 2017. The Petitioner has not established that our decision to dismiss the appeal was based on an incorrect application of law or policy with respect to the facts of this case.

On motion, the Petitioner resubmits its bank statements from its checking accounts with [redacted] Bank for parts of 2017, 2018, and January 2019. It asserts that it has "an average account balance of approximately \$250,000." Further, it resubmits account summaries from its line of credit with [redacted] Bank and asserts that the line of credit "has an available balance of approximately \$500,000." The Petitioner made the same assertions and submitted the same evidence on appeal, and we determined that the documents did not establish the Petitioner's ability to pay. On motion, the Petitioner does not

³ Current assets consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory, and prepaid expenses. Joel G. Siegel & Jae K. Shim, *Barron's Dictionary of Accounting Terms* 117 (3d ed. 2000). Current liabilities are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

⁴ The Petitioner is an S corporation. A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

allege any specific error in our analysis of its bank accounts or line of credit. On motion, the Petitioner also resubmits a letter from its certified public accountant (CPA) attesting to its ability to pay in 2015, 2016, and 2017. We analyzed the CPA's letter in our prior decision and determined that it did not establish the Petitioner's ability to pay the proffered wage. On motion, the Petitioner does not allege any specific error in our analysis of the CPA's letter.

In sum, the Petitioner has not submitted new facts that overcome our prior decision, or offered legal arguments establishing that our decision to dismiss the appeal was based on an incorrect application of law or policy with respect to the facts of this case. The record does not establish the Petitioner's continuing ability to pay the proffered wage to the Beneficiary of this petition and the proffered wages to the beneficiaries of the multiple other petitions that it has filed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.