



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

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

In Re: 20272990

Date: JULY 19, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a first line supervisor of cosmetologists. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based, “EB-3” category allows a U.S. business to sponsor a foreign national for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

The Director of the Nebraska Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage of the Beneficiary. On appeal, the Petitioner asserts that the record before the Director established its ability to pay the Beneficiary’s proffered wage.

In visa petition proceedings it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director’s decision and sustain the appeal.

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national 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.

To be eligible for the classification it requests for the beneficiary, a petitioner must establish, among other things, that it has the ability to pay the proffered wage stated in the labor certification. As provided in the regulation at 8 C.F.R. § 204.5(g)(2):

The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. 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 United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. 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].

## II. ANALYSIS

Both the Form I-140, Immigrant Petition for Alien Worker, Part 6, item 8 and the ETA Form 9089, Application for Permanent Employment Certification, Part G, item 1 indicated that the Beneficiary's annual wage would be \$42,453.00 per year.<sup>1</sup> In denying the petition, the Director stated that "[t]he Petitioner provided a copy of their 2020 IRS Form 1120-S. . . . On the Schedule L section of the form, it shows current assets of \$108,000.00 dollars minus current liabilities of \$108,000.00, which does not show equal or greater than the proffered wage of \$42,453.00."

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the beneficiary was employed and paid by the petitioner during the period following the priority date. A petitioner's submission of documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage for the time period in question, when accompanied by a form of evidence required in the regulation at 8 C.F.R. § 204.5(g)(2), may be considered proof of the petitioner's ability to pay the proffered wage. In this case, the record indicates that the Beneficiary worked for the Petitioner in 2018 and that she was paid \$45,866.95, but her earnings preceded the priority date of January 27, 2020. Therefore, the Petitioner did not establish its ability to pay the proffered wage from the priority date onward based on 2018 wages paid to the Beneficiary.

If a petitioner does not establish that it has paid the beneficiary an amount equal to or above the proffered wage from the priority date onward, USCIS will examine the net income and net current assets figures recorded on the petitioner's federal income tax return(s), annual report(s), or audited financial statements(s). If either of these figures, net income or net current assets, equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the beneficiary in a given year, the petitioner would ordinarily be considered able to pay the proffered wage during that year.

In its appeal brief, the Petitioner maintains that its net current assets for 2020 are sufficient evidence of its ability to pay the Beneficiary's wage. It contends that the Director mistakenly "deducted the net current assets from the net current assets. This is incorrect." The Petitioner points to Schedule L of its 2020 IRS Form 1120-S, U.S. Income Tax Return for an S Corporation, listing current assets of \$108,000 and no current liabilities. In addition, the Petitioner provides a letter from its tax preparer,

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<sup>1</sup> The Form I-140 was filed on September 16, 2020, and the ETA Form 9089 was filed on January 27, 2020. The "priority date" of an employment-based immigrant petition is the date the underlying labor certification application (ETA Form 9089) is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

which states: “The total assets for 2020 are \$108,000. . . . The total liabilities and shareholder’s equity for 2020 are zero. The balance sheet reflects net current assets of \$108,000. There are no current liabilities. Thus, the current assets less the current liabilities are \$108,000.”

Upon review, we agree with the Petitioner that the Director erred in concluding that the Petitioner did not have the ability to pay the Beneficiary’s wage in 2020. The record reflects that the Petitioner had sufficient net current assets in that year to pay the proffered wage of \$42,453.00. Therefore, the Petitioner has sufficiently demonstrated its ability to pay the Beneficiary’s proffered wage, and the Director’s determination regarding this issue is withdrawn.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has overcome the grounds for denial in the Director’s decision.

**ORDER:** The appeal is sustained.