



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

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

In Re: 23607634

Date: DEC. 13, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a computer consulting business, seeks to employ the Beneficiary as a programmer analyst. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. 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 Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that it had the continuing ability to pay the Beneficiary the proffered wage from the priority date onward. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Petitioner submits additional evidence and asserts that the record demonstrates its ability to pay the proffered wage.

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 sustain the appeal.

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 include copies of annual reports, federal tax returns, or audited financial statements. *Id.* In determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not annually pay the full proffered wage, USCIS next examines whether it generated sufficient annual amounts of net income or net current assets to pay any difference between the proffered wage and wages paid. If net income and net current assets are insufficient, USCIS may consider other factors affecting a petitioner's ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

The proffered wage in this case is \$101,816 per year and the priority date is September 10, 2014. The record establishes that the Petitioner paid the Beneficiary partial wages from 2015 to 2020. The record also includes the Petitioner's federal income tax returns for 2014 through 2021, reflecting net income

and net current assets above the proffered wage. Upon review of the evidence, including evidence submitted on appeal, we conclude that the Petitioner has established its continuing ability to pay the proffered wage from the priority date onward.

ORDER: The appeal is sustained.