



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

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

In Re: 27459661

Date: AUG. 14, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Other Worker)

The Petitioner, a poultry processor, seeks to permanently employ the Beneficiary as a poultry trimmer. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as an “other worker.” *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This category allows a U.S. business to sponsor a noncitizen for permanent residence to work in a job requiring less than two years of training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term “other worker”).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate its required ability to pay the offered position’s proffered wage. On appeal, we affirmed the decision. *See In Re: 01139604* (AAO Feb. 24, 2021). The matter returns to us on the Petitioner’s motion to reopen.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we decline to consider the motion’s previously requested evidence and will dismiss the filing.

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We review only our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring new evidence that may change the latest decision’s outcome).

The Petitioner’s motion includes copies of audited financial statements for the company’s 2017 fiscal year, which ran from June 2016 to June 2017.

The Petitioner must demonstrate its continuing ability to pay the offered position’s proffered wage of \$17,202 a year, from the petition’s November 18, 2016 priority date onward. *See* 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.* Also, the company must demonstrate its ability to pay the combined proffered wages of many Forms I-140, Petitions for Alien Workers, that it filed for other beneficiaries that were pending or approved as of this petition’s priority date. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition’s approval where, as

of the filing's grant, a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple petitions); *see generally* 6 *USCIS Policy Manual* E.(4)(C)(2) n.25, www.uscis.gov/policy-manual ("A substantially increased total labor expense of multiple beneficiaries may potentially impact the petitioner's ability to continue to pay existing employees.")¹

We decline to consider the evidence on motion because the company had prior opportunities to submit it. Before denying the petition, the Director specifically asked the Petitioner to provide regulatory required materials for the applicable years and afforded the company a reasonable chance to submit them. *See* 8 C.F.R. § 103.2(b)(14) ("Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.") The company also could have provided the materials on appeal. *See* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations); USCIS, "Instructions for Notice of Appeal or Motion," 6, www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf (allowing an appellant to submit a "brief and/or additional evidence" within 30 days of an appeal's filing). The Petitioner did not provide the required documentation with the initial filing, in response to the Director's request for evidence, or on appeal. Because the Petitioner did not previously submit the requested evidence and does not demonstrate its prior unavailability, we will not consider it. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider appellate evidence where, before a petition's denial, a petitioner received notice of the required materials and a reasonable opportunity to provide them). Thus, the company has not demonstrated its ability to pay the proffered wage.

Even if we considered the motion's evidence, it would not establish the Petitioner's "continuing" ability to pay. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate its ability to pay "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence"). The evidence does not demonstrate the Petitioner's ability to pay the proffered wage after 2017. Thus, under the regulation, the evidence would not demonstrate the company's continuing ability to pay.

For the foregoing reasons, the motion does not demonstrate the Petitioner's eligibility for the requested benefit. We will therefore affirm the appeal's dismissal and the petition's denial.

ORDER: The motion to reopen is dismissed.

¹ The Petitioner need not demonstrate its ability to pay proffered wages of petitions that it withdrew or that USCIS rejected, denied, or revoked. *See generally* 6 *USCIS Policy Manual* E.(4)(C)(2). Also, the Petitioner need not demonstrate its ability to pay proffered wages before the priority dates of their corresponding petitions or after the dates their corresponding beneficiaries obtained permanent residence. *Id.*