



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

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

In Re: 25672371

Date: MAR. 2, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Other Worker

The Petitioner provides closet installation services and seeks to permanently employ the Beneficiary as a custom closet installer and trainer. The company requests his classification under the third-preference, immigrant visa category as an “other worker” requiring less than two years of training or experience. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 C.F.R. § 1153(b)(3)(A)(iii).

The Director of the Texas Service Center denied the petition, concluding that Beneficiary was not qualified for the position because he did not possess a valid driver’s license. The matter is now before us on appeal. On appeal, the Petitioner argues that the Beneficiary’s temporary driver’s license is a valid driver’s license.

The Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We exercise de novo, appellate review. *Matter of Christo’s*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we agree with the Petitioner that the Director erred in concluding that the Beneficiary did not possess a valid driver’s license.¹ We will therefore withdraw the Director’s finding on this issue. However, because the Director did not render a determination on the Petitioner’s ability to pay the proffered wage, we will remand the matter for entry of a new decision consistent with the following analysis.

A petitioner must demonstrate its continuing ability to pay an offered position’s 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 generally include copies of a business’s annual reports, federal tax returns, or audited financial statements. *Id.*

¹ The Petitioner initially submitted a copy of the Beneficiary’s Florida Temporary Driver License with an expiration date of March 16, 2023. With the appeal, the Petitioner presents the Beneficiary’s “Driver Record” from the Florida Department of Highway Safety and Motor Vehicles listing his current license “status” as “valid” with an issue date of August 19, 2022, and an expiration date of November 6, 2024. The Beneficiary’s Florida Driver Record further indicates that he has had a driver’s license since 2016. Accordingly, the Petitioner has provided sufficient evidence demonstrating that the Beneficiary has a valid driver’s license.

In determining ability to pay, 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 the 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 Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).²

The Petitioner's accompanying labor certification states the proffered wage of the offered position of custom closet installer and trainer as \$39,000.00 a year. The petition's priority date is June 8, 2021, the date DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date). The Petitioner filed the Form I-140 on June 28, 2022.

For purposes of this decision, we will consider the Petitioner's ability to pay in 2021, the year of the petition's priority date. While the Petitioner submitted its 2020 federal income tax return, the record does not include evidence of its ability to pay starting in 2021. We will therefore remand the matter for the Director to render a determination regarding the Petitioner's ability to pay beginning with the year of the petition's priority date. The Director should request the Petitioner to submit additional evidence of its ability to pay the proffered wage starting in 2021 and thereafter. *See* 8 C.F.R. § 204.5(g)(2) (requiring a petitioner to demonstrate their ability to pay "continuing until the beneficiary obtains lawful permanent residence").

If supported by the record, the Director may notify the Petitioner of any other potential denial grounds. The Director, however, must afford the Petitioner a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

The Petitioner has overcome the Director's sole basis for denial, but it has not established its ability to pay the offered position's proffered wage as of the petition's priority date and thereafter.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

² Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Four Holes Land & Cattle, LLC v Rodriguez*, No. 5:15-cv-03858, 2016 WL 4708715, *X (D.S.C. Sept. 9, 2016).