



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

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

In Re: 28623923

Date: NOV. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a food production company, seeks to employ the Beneficiary as a production worker. It requests classification of the Beneficiary as an unskilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires less than two years of training or experience.

The Director of the Nebraska Service Center denied the petition after determining that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. On appeal, the Petitioner contends that the evidence it submitted establishes that it has the continuing ability to pay the proffered wage from the priority date onward. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

Based on the totality of the circumstances, we conclude that the Petitioner more likely than not has the continuing ability to pay the proffered wage. *See* 8 C.F.R. § 204.5(g)(2). *See also Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has met that burden.

ORDER: The appeal is sustained.