



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

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

MATTER OF C-K-B-C-

DATE: JULY 8, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a church, seeks to employ the Beneficiary as a senior pastor. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated its ability to pay the proffered wage to the Beneficiary.

The matter is now before us on appeal. The Petitioner claims that it has the ability to pay the proffered wage to the Beneficiary as it has been paying him more than the proffered wage and that the Director erred in not considering copies of checks that were issued to the Beneficiary. Upon *de novo* review, we will dismiss the appeal.

**I. LAW AND ANALYSIS**

The regulation at 8 C.F.R. § 204.5(g)(2) states:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. 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 the Service.

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The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor. The priority date of the petition is May 16, 2013 and the proffered wage is \$31,699 per year.

On June 7, 2016, we sent the Petitioner a request for evidence (RFE) with a copy to counsel. We requested that the Petitioner submit its IRS Form 990, Return of Organization Exempt from Income Tax, annual report, or audited financial statements for 2013, 2014, and 2015, which are regulatory requirements needed to establish the continuing ability to pay the proffered wage. We also requested a copy of the last three paychecks issued to the Beneficiary. In addition to the Director's conclusion regarding the Petitioner's ability to pay the proffered wage, we noted in our RFE that a separate issue needed to be resolved regarding whether the Beneficiary's degree is an advanced degree under 8 C.F.R. § 204.5(k)(2). Accordingly, we requested evidence demonstrating that the Beneficiary's master of divinity degree from [REDACTED] is a degree from an accredited institution of higher education. The RFE informed the Petitioner that we may dismiss its appeal if it did not submit requested evidence that precludes a material line of inquiry. *See* 8 C.F.R. § 103.2(b)(14).

The Petitioner responded to our RFE on June 15, 2016. However, the petitioner did not provide its IRS Form 990, annual report, or audited financial statements for 2013, 2014, and 2015, or evidence that the Beneficiary's degree was obtained from an accredited institution of higher education at the time it was awarded. Since the Petitioner did not submit requested evidence that precludes a material line of inquiry, the petition will be denied pursuant to 8 C.F.R. § 103.2(b)(14).

Although the Petitioner did not submit all of the requested evidence, we will address the issues of 1) whether the Petitioner demonstrated its ability to pay the proffered wage, and 2) whether the Beneficiary meets the minimum education required for the offered position, based on the record before us.

#### A. The Ability to Pay the Proffered Wage

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.<sup>1</sup> If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

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<sup>1</sup> *See River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)).

The record includes copies of checks the Petitioner issued to the Beneficiary in May through December 2013, in the amount of \$2500 each. On appeal the Petitioner asserts that these checks represent the compensation paid to the Beneficiary, totaling \$20,000 in 2013. The record does not include the Beneficiary's 2013 Form W-2 or 1099 to support the Petitioner's assertion that these payments represent compensation. Even if we accept that the payments represent compensation to the Beneficiary, the total amount of compensation is below the proffered wage of \$31,699 per year.

The record contains the Beneficiary's IRS Form 1040, with Schedule C, for 2013 and 2014. The Schedule C for 2013 and 2014 indicate that the Beneficiary received \$30,000 in income, but the record only contains a copy of the 2014 Form W-2 the Petitioner issued to the Beneficiary stating wages paid of \$30,000. As the record does not include a 2013 Form W-2 or Form 1099, we cannot determine whether the Beneficiary's wages in 2013 were paid by the Petitioner. Although the Petitioner asserts that the checks demonstrate its payment of \$20,000 in wages to the Beneficiary in 2013, this amount is below the \$30,000 in claimed income on the Beneficiary's Form 1040, Schedule C. In any further filings, the Petitioner must submit the Form W-2 or 1099 it issued to the Beneficiary in 2013.

We indicated in our RFE that the Petitioner needed to establish that it had the ability to pay the proffered wage without consideration of the amounts paid to the Beneficiary for housing. The regulation at 20 C.F.R. § 656.10(c)(2) states that in signing the labor certification the Petitioner attests that the offered wage "is not based on commissions, bonuses or other incentives, unless the employer guarantees a prevailing wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage." As the monthly payments to the Beneficiary are below the prevailing wage of \$31,699 listed on the labor certification, the housing allowance is not considered in the total offered wage.

In response to our RFE, the Petitioner submitted its bank statements for April and May 2016, the Beneficiary's three most recent pay statements, and the Forms W-2 issued to the Beneficiary for 2014 and 2015. The Beneficiary's Form W-2 for 2015 states that it paid him \$24,000 in that year, which is less than the proffered wage of \$31,699. The Petitioner did not submit any additional evidence demonstrating that it had the ability to pay the proffered wage to the Beneficiary for that year. Therefore, while we acknowledge that the Petitioner has paid some wages to the Beneficiary in 2014 and 2015, it has not demonstrated that it could have paid the full wage in 2013 or the difference of \$1699 in 2014 and \$7699 for 2015.

In addition, the Petitioner has not met the regulatory requirements of 8 C.F.R. § 204.5(g)(2) by providing its IRS Form 990, Return of Organization Exempt from Income Tax, annual report, or audited financial statements for 2013, 2014, and 2015 to establish its continuing ability to pay the proffered wage. Therefore, we conclude that the Petitioner has not established its ability to pay the proffered wage to the Beneficiary from the priority date of May 16, 2013, onward.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage according to *Matter of Sonegawa*. USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's adjusted gross income compared to its expenses. USCIS may consider such factors as

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the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In this case, the Form I-140 states that the Petitioner has been in business since 1994 and that it employs one individual. The Petitioner has not provided any evidence of its historic growth or evidence of its net income or net current assets for 2013, 2014, and 2015. We requested that the Petitioner submit its IRS Form 990, Return of Organization Exempt from Income Tax, annual reports, or audited financial statements for 2013, 2014, and 2015, but it did not submit any of these in response. The Petitioner has not provided any evidence of uncharacteristic expenditures in any of the relevant years or other evidence to demonstrate that it could have paid the Beneficiary the full proffered wage. Therefore, the Petitioner has not established its ability to pay the proffered wage to the Beneficiary for 2013, 2014, and 2015.

**B. The Beneficiary's Educational Qualifications**

As a separate matter apart not mentioned by the Director, we conclude that the Petitioner has not established that the Beneficiary possesses an advanced degree under 8 C.F.R. § 204.5(k)(2) because a degree from an unaccredited institution will not be considered an advanced degree. As indicated above, the Beneficiary graduated from [REDACTED] in 1994 with a master of divinity degree. The website for the [REDACTED] states that the [REDACTED] was not accredited until 2005.<sup>2</sup>

In the United States, institutions of higher education are not authorized or accredited by the federal government.<sup>3</sup> Instead, the authority to issue degrees is granted at the state level. However, state approval to operate is not the same as accreditation by a recognized accrediting agency. According to the U.S. Department of Education (DOE), "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality."<sup>4</sup> Because a U.S. degree must be from an accredited institution of higher education, a foreign degree must also be accredited by any existing comparable system of accreditation for that country in order to qualify as the foreign equivalent of a U.S. degree under 8 C.F.R. § 204.5(k)(2). Therefore, because the Beneficiary's degree was obtained before the [REDACTED] was accredited the Petitioner has not established that the Beneficiary possesses an advanced degree.

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<sup>2</sup> See Accredited Institutions, <http://english.kcue.or.kr/board/bbs/board.php> [REDACTED] (accessed June 28, 2016).

<sup>3</sup> See The Database of Accredited Postsecondary Institutions and Programs, <http://ope.ed.gov/accreditation>.

<sup>4</sup> See Accreditation in the United States, <http://www2.ed.gov/print/admins/finaid/accred/accreditation.html>.

## II. CONCLUSION

The Petitioner did not submit requested evidence that precludes a material line of inquiry. Further, the Petitioner has not demonstrated its ability to pay the proffered wage or that the Beneficiary meets the minimum education requirements for the offered position. Therefore, the appeal will be dismissed.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-K-B-C-*, ID# 17235 (AAO July 8, 2016)