



New Policy Guidance Makes It Easier For Employers To Sponsor Foreign Workers For Green Cards

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On March 15, 2023, the U.S. Citizenship and Immigration Service (USCIS) issued new guidance on how an employer can demonstrate the ability to pay. This is a key legal element of a permanent residency application filed by an employer. The [guidance is notable](#) because it creates a more flexible approach to the issue and provides an appendix of common business structures and corresponding financial documents that should be beneficial to adjudicators. In theory, at least, this should support consistent adjudications of these applications.

The policy guidance reiterates many of the existing requirements for demonstrating ability to pay. Specifically, it reiterates that the employer must provide one of at least an audited financial statement, a tax return, or an annual report to demonstrate ability to pay. It reiterates that actual payment of the foreign national would suffice. It also notes that, consistent with long-standing practice, employers with over 100 workers may provide a statement from a chief financial officer regarding the company's ability to pay and that the USCIS may accept this letter in lieu of the other financials.

In other ways, however, the new guidance creates a more flexible approach. It instructs adjudicators to take a totality of the circumstances approach and to consider a host of relevant factors, including special circumstances resulting in temporary losses. It permits consideration of bank accounts, lines of credit, the payment of salaries to other employees, and other relevant

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business and financial considerations. As such, this flexibility would remove one of the biggest impediments to demonstrating that companies that may operate at a loss in the short-term, such as startups and companies focusing on R&D, can nevertheless pay the foreign worker.

This new guidance should make it easier for small and medium-sized businesses, which may lack sophisticated financial records, to sponsor foreign workers for permanent residency.