U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42236617

Date: APR. 2, 2026

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a provider of healthcare staff to nursing homes, rehabilitation clinics, and hospitals, seeks to employ the Beneficiary as a physical therapist. The company requests his classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree." *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). The Petitioner also requests the Beneficiary's designation under "Schedule A Group 1" of the U.S. Department of Labor (DOL), which would allow the company to avoid advertising the offered job to U.S. workers. *See* 20 C.F.R. § 656.5(a)(1).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's qualifications for Schedule A designation as a physical therapist. Specifically, SCOPS found that the petition lacks a copy of a physical therapy (PT) license for him in the state of intended employment or a statement from a PT licensing official in that state indicating his qualifications to take its written PT licensing examination. On appeal, the Petitioner submits a copy of the Beneficiary's PT license for the state of intended employment.

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). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we reject the company's appellate evidence and conclude that, even if we accepted it, the Beneficiary's license would not establish his eligibility for Schedule A designation at the time of the petition's filing. We will therefore dismiss the appeal.

I. LAW

Immigration as an advanced degree professional usually follows a three-step process. First, a prospective employer must obtain DOL certification that: there are insufficient U.S. workers able, willing, qualified, and available for the offered job; and an alien's employment in the job would not harm the wages or working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). If DOL approves a job for an alien, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C.

§ 1154(a)(1)(F). Finally, if USCIS grants a petition, an alien beneficiary may apply abroad for an immigrant visa or, if eligible, for adjustment of status in the United States. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a).

DOL, however, has already determined that the United States lacks sufficient physical therapists and that employment of aliens in this Schedule A occupation would not harm wages or working conditions of U.S. workers in similar jobs. 20 C.F.R. § 656.5(a)(1). Thus, employers seeking to employ aliens in Schedule A occupations need not advertise the jobs to U.S. workers, and DOL authorizes USCIS to adjudicate Schedule A labor certification applications in immigrant visa petition proceedings. 20 C.F.R. § 656.15(a). Therefore, in this matter, USCIS rules not only on the immigrant visa petition, but also on its accompanying labor certification application. *See* 20 C.F.R. § 656.15(e) (describing USCIS labor certification determinations in Schedule A proceedings as "conclusive and final").

II. ANALYSIS

A Schedule A petition for a foreign physical therapist must include "a letter or statement, signed by an authorized state [PT] licensing official in the state of intended employment, stating the alien is qualified to take that state's written licensing examination for physical therapists." 20 C.F.R. § 656.15(c)(1). In lieu of such a letter, USCIS also accepts evidence establishing "that the beneficiary currently has (and had at the time of filing) a permanent license to practice [PT] in the state of intended employment." 6 *USCIS Policy Manual* E.7(F)(1), www.uscis.gov/policy-manual.

The Petitioner's initial filing included evidence of the Beneficiary's PT licensure in the Philippines, Northern Mariana Islands, and New York state. The petition, however, identifies the state of intended employment as Florida. Thus, contrary to the DOL regulation and USCIS policy, the petition lacked evidence of his qualifications to practice PT or take the PT licensing exam in the state of intended employment.

SCOPS mailed a request for additional evidence (RFE) to the Petitioner, seeking a copy of the Beneficiary's Florida PT license or a letter from a Florida PT official that the Beneficiary qualifies to take the state's PT licensing exam. In response, the Petitioner submitted a letter from a federation of U.S. state PT boards indicating the Beneficiary's passage of a 2016 U.S. national PT examination. The Petitioner's chief executive officer (CEO) stated that "the beneficiary does not have to take any other physical therapy licensure examinations as he already passed this licensure examination."

The federation's website states that the group develops, maintains, and administers the national PT exam. *See* The Fed'n of State Bds. of PT, "About Us," www.fsbpt.org/About-Us. But the website describes the national exam as only a "step" toward obtaining a U.S. PT license. *Id.* Thus, the federation's letter does not demonstrate the Beneficiary's PT licensure in Florida or his qualifications to take Florida's PT licensing examination.

The Petitioner's RFE response also included additional statements from the company's CEO. She said that, to obtain Florida PT licensure, the Beneficiary had to "transfer" his passing grade on the national PT exam to Florida's PT board in a "Licensure by Endorsement" process. The company submitted a payment receipt for an endorsement application for the Beneficiary and a letter from Florida's Department of Health. The CEO stated that the letter proves that the Beneficiary, who

resides overseas, could obtain a Florida PT license once he enters the United States and complies with endorsement criteria requiring his presence in Florida.

The evidence and arguments in the Petitioner's RFE response might indicate that, by the time of the petition's filing, the Beneficiary qualified to obtain a Florida PT license. But DOL's regulation and USCIS policy specifically require submission of either a state PT license or a statement from a state PT official that the Beneficiary qualifies to take its PT exam. *See* 20 C.F.R. § 656.15(c)(1); 6 *USCIS Policy Manual* E.7(F)(1). Because the Petitioner's RFE contained neither document type, the company did not demonstrate the Beneficiary's eligibility for Schedule A designation as a physical therapist.

On appeal, the Petitioner provides a copy of a Florida PT license in the Beneficiary's name. SCOPS' RFE, however, notified the company of the need for the required evidence and afforded it a reasonable opportunity to submit it. We therefore decline to consider the new evidence on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when a petitioner received notice of the required evidence and a reasonable opportunity to provide it); *see also* 8 C.F.R. § 103.2(b)(11) (requiring an RFE response to include all evidence submitted together at one time).

Also, even if we considered the Petitioner's appellate evidence, it would not demonstrate the Beneficiary's qualifications for Schedule A designation as a physical therapist. The Florida PT license bears a December 24, 2025 date and therefore does not establish his eligibility at the time of the petition's filing on September 12, 2025. *See* 8 C.F.R. § 103.2(b)(1) ("An applicant or petitioner must establish that he or she is eligible for the requested benefit *at the time of filing the benefit request*.") (emphasis added); *see also* 6 *USCIS Policy Manual* E.7(F)(1) (stating USCIS' acceptance of evidence "that the beneficiary currently has (*and had at the time of filing*) a permanent license to practice [PT] in the state of intended employment") (emphasis added).

III. CONCLUSION

The Petitioner did not demonstrate the Beneficiary's qualifications for Schedule A designation as a physical therapist. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.