U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42236427

Date: APR. 21, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a communications and information technology company, seeks to employ the Beneficiary as a specialist in systems engineering. The company requested his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

Service Center Operations (SCOPS) denied the petition and the Petitioner's following combined motions to reopen and reconsider. SCOPS concluded that, contrary to the requested classification's criteria, the offered job does not require a professional with a bachelor's degree. On appeal, the Petitioner states that it mistakenly selected the professional classification on the Form I-140, Immigrant Petition for Alien Workers, and meant to choose the "skilled worker" category. *See* section 203(b)(3)(A)(i) of the Act (providing immigrant visas to qualified immigrants capable of performing skilled labor requiring at least two years of training or experience).

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 conclude that, under U.S. Citizenship and Immigration Services (USCIS) policy, the Petitioner did not timely notify USCIS of the company's clerical error. We will therefore dismiss the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) 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 wages or working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, a prospective employer must submit a DOL-approved labor certification with an immigrant visa petition to USCIS. *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, "adjustment of status" in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

In February 2024, the Petitioner filed an application for labor certification for the offered specialist job. The labor certification application incorporates the requirements for the job listed on the company's previously filed application for a prevailing wage determination (PWD).[1] The PWD application states the job's primary requirements as a bachelor's degree in industrial and systems engineering, computer engineering, or a closely related field. Neither training nor experience are required. The PWD application also states alternative requirements. The alternative requirements indicate the Petitioner's acceptance of two years' experience without any training or education.

In June 2025, DOL approved the labor certification application, and, the following month, the Petitioner filed the petition. Although the alternative requirements of the offered job do not require a baccalaureate, part 2 of the company's Form I-140 indicates the petition's filing for a "professional (at a minimum, possessing a bachelor's degree or a foreign equivalent to a U.S. bachelor's degree.)"

In August 2025, without first issuing the Petitioner a request for additional evidence (RFE) or notice of intent to deny (NOID), SCOPS denied the petition. SCOPS concluded that the offered job does not require a bachelor's degree and that the accompanying labor certification therefore does not support the requested immigrant visa category. *See* 8 C.F.R. § 204.5(l)(3)(i) (requiring a labor certification accompanying a petition for a professional to "demonstrate that the job requires the minimum of a baccalaureate degree").

SCOPS properly denied the petition. Under USCIS policy, petitioners bear responsibility for requesting the intended visa categories. *See* USCIS, *Petitioner Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Workers*, "Requesting or Changing Visa Categories," www.uscis.gov/forms/all-forms. After receiving a petition, USCIS issues a receipt notice reflecting the visa category requested on the Form I-140. USCIS guidance instructs a petitioner to "[m]ake sure this category is correct." *Id.* If the requested category is not the one intended, the guidance advises a petitioner to "immediately call the USCIS Contact Center" to change the visa classification before the Agency decides the petition. *Id.* Once a petition is decided, a visa category cannot be changed. *Id.*

On appeal, the Petitioner asserts that it "promptly acknowledged in the RFE response that the wrong box was checked due to an honest clerical mistake and supplied a corrected Form I-140." As

[1] Effective June 1, 2023, DOL required petitioners to electronically file labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089, Application for Permanent Employment Certification. *See generally* 6 *USCIS Policy Manual* E.6(A)(2). DOL no longer uses Form ETA-9089 to collect information about the minimum requirements of the job opportunity. *Id.* Instead, employers now provide that information on the Application for Prevailing Wage Determination (Form ETA-9141). *Id.*

previously indicated, however, the record shows that SCOPS did not issue a RFE.[2] Rather, the record shows that the Petitioner's combined motions informed SCOPS of the clerical error and included the corrected form. By that time, SCOPS had already denied the petition and, under USCIS policy, could not change the visa classification. *See* USCIS, *Petitioner Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Workers*, "Requesting or Changing Visa Categories," *supra* ("We cannot change the visa category if we have already made a decision on your Form I-140."). As previously indicated, the company should have notified USCIS of the clerical error on the Form I-140 after receiving the petition's receipt notice. *Id.*

The Petitioner also contends that SCOPS "appeared to treat the erroneous selection of a[n immigrant visa] classification as a material misrepresentation." But the record indicates that SCOPS did not allege a material misrepresentation and neither denied the petition nor dismissed the motions on that basis.

III. CONCLUSION

Consistent with USCIS policy, SCOPS correctly denied the petition for lack of a valid labor certification supporting the requested immigrant visa classification.

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.

[2] USCIS need not send a RFE or NOID before denying a petition. *See* 8 C.F.R. § 103.2(b)(8)(iii).