U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37718199

Date: APR. 25, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business brokerage and merger/acquisition firm, seeks to employ the Beneficiary as a business broker. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years of training or experience. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner neither demonstrated the offered job's qualifications for the requested category nor the Beneficiary's qualifying education for the job. On appeal, the Petitioner contends that SCOPS misinterpreted the job's requirements and submits additional evidence regarding the Beneficiary's qualifications.

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 the company has not established that the offered job requires a skilled worker. We will therefore dismiss the appeal.

I. LAW

Immigration as a skilled worker 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 an offered job; and a noncitizen's permanent employment in the job would not harm wages and working conditions of U.S. workers with similar positions. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); *Lee v USCIS*, 592 F.3d 612, 616 (4th Cir. 2010).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act; *Lee*, 592 F.3d at 616. Among other things, USCIS determines whether a noncitizen beneficiary meets the

requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(B), (4).

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(a) of the Act, 8 U.S.C. § 1255(a); *Lee*, 592 F.3d at 616.

II. ANALYSIS

Skilled workers must perform "skilled labor (requiring at least 2 years training or experience)." Section 203(b)(3)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker"). In contrast, "other workers" permanently fill jobs requiring less than two years' training or experience. Section 203(b)(3)(A)(iii); *see also* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker"). "The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by [DOL]." 8 C.F.R. § 204.5(l)(4).

Also, a petitioner for a skilled worker must demonstrate that a beneficiary met all DOL-certified job requirements of an offered job by a petition's priority date. 8 C.F.R. § 204.5(l)(3)(ii)(B); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is August 2, 2022, the date DOL accepted the Petitioner's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

When assessing a beneficiary's qualifications for an offered job, USCIS must examine the job-offer portion of an accompanying labor certification to determine the job's minimum requirements. USCIS may neither ignore a certification term nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The accompanying labor certification states the minimum requirements of the offered business broker job as a U.S. high school diploma or its foreign educational equivalent. Part H of the labor certification, "Job Opportunity Information," does not indicate the job's need for any training or experience. Question H.14 of the labor certification, "Specific skills or other requirements," states:

> Business brokers are assigned to businesses based on their past work experience. Since the businesses being sold can encompass all industries (e.g. hospitality, retail, construction, etc.) *the ideal candidate will have at least 2 years of work experience* in the specific industry in question. In this case, the ideal candidate will have experience in distribution.

(emphasis added).

On the labor certification, the Beneficiary attested that, by the petition's priority date, he obtained a bachelor's degree in social work from a South African university and gained more than five years' full-time experience as a "Telecom Project Manager" and a "Telecom Operations Director."

As proof of the Beneficiary's qualifications for the job, the Petitioner's initial filing included a copy of his resume. The information on the resume supports the Beneficiary's attestations on the labor certification. But the record lacked independent, objective evidence of his claimed qualifying education and experience. *See, e.g.,* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring letters from former employers to document a beneficiary's qualifying experience).

In response to SCOPS' request for additional evidence (RFE), the Petitioner submitted four recommendation letters from the Beneficiary's "clients" and a letter from him.[1] None of these documents verifies his claimed educational credentials or supports his employment history stated on the labor certification.

In denying the petition, SCOPS found the offered job's minimum requirements to include only a high school diploma. The Petitioner's response to question H.14 of the labor certification states that "the ideal candidate will have at least 2 years of work experience" in the distribution industry. But SCOPS found that the response stated preferred requirements, not minimum requirements. Because the job did not require at least two years of experience, SCOPS found that it did not qualify for the skilled worker category. Also, because the record lacked objective evidence of the Beneficiary's claimed high school diploma, SCOPS found that the Petitioner did not demonstrate his qualifications for the job.

A. The Job's Qualifications for the Requested Category

On appeal, the Petitioner asserts that the offered job constitutes a skilled worker position. The company contends: "The labor certification explicitly states that two years of experience are required. This reflects the bona fide minimum requirements to ensure candidates possess the necessary skills to perform the job duties effectively." The company argues that its description of an "ideal candidate" with at least two years' experience in the distribution industry "is entirely consistent with the requirements for a skilled worker. This preference ensures that candidates are well-prepared for the specialized responsibilities of the role, such as conducting market analyses, mediating negotiations, and preparing legal documents." According to the company, "The description of an ideal candidate does not negate the minimum requirements; instead, it provides context for the employer's expectations and aligns with regulatory standards."

The Petitioner further contends that SCOPS' interpretation of the "ideal candidate" language on the labor certification "overlooks key distinctions between mandatory qualifications and preferred attributes." The company states: "The labor certification unambiguously establishes that two years of experience *and* a high school diploma are the minimum qualifications for the role. The use of additional language to describe preferred qualities does not diminish these requirements." (emphasis in original).

The record, however, does not support the Petitioner's arguments. The company's labor certification does not "explicitly" or "unambiguously" state that the offered job requires at least two years of experience. In response to question H.6 on the labor certification, "Is experience in the job offered

[1] The letter is on the stationery of a Wyoming telecommunications company and identifies the Petitioner as the firm's chief executive officer.

required for the job?" the company selected the box marked "No." Asked in question H.10 "Is experience in an alternate occupation acceptable?" the company again chose the box marked "No." Thus, the Petitioner affirmatively indicated on the labor certification that the job did not require any experience. If the offered job truly requires at least two years of experience in the distribution industry, the company has not explained why it indicated otherwise on the labor certification. Considering the Petitioner's direct responses to questions H.6 and H.10 and the plain language on the labor certification, SCOPS properly interpreted the description of an "ideal candidate" with two years' experience in response to question H.14 as a mere preference. *See Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) ("The Court – like the [immigration service] – must examine the certified job offer exactly as it is completed by the prospective employer.")

Moreover, in the Petitioner's RFE response, the company conceded that the offered job does not require two years' experience. The company stated: "Given the complexity and nature of the [job's] duties, the ideal candidate would possess at least two years of experience in the distribution industry. *This experience is not mandatory but is highly desirable*" (emphasis added). Counsel also stated that "my client has indicated that *no formal experience is strictly required*" (emphasis added). *See Matter of Velasquez*, 19 I&N Dec. 377, 382 (BIA 1986) ("Absent egregious circumstances, a distinct and formal admission made before, during, or even after a proceeding by an attorney acting in his professional capacity binds his client as a judicial admission."); *see also Ascencio v. Garland*, No. 21-1147, 2022 WL 112071, at *6 (4th Cir. Jan. 12, 2022) (recognizing an Immigration Judge's ability to rely on admissions and concessions in determining an alien's removability).

The Petitioner has not established that the offered job's minimum requirements include at least two years' experience. The company therefore has not demonstrated that the job qualifies for the requested skilled worker category. We will therefore affirm the petition's denial on this ground.

B. The Beneficiary's Qualifications for the Offered Job

Having determined the offered job's need for only a high school diploma, we consider the Beneficiary's qualifications for the job.

On appeal, the Petitioner submits additional evidence of the Beneficiary's claimed qualifying education. We do not generally accept or consider evidence on appeal where, before petitions' denials, petitioners received notice of required materials and reasonable opportunities to provide them. *Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (citations omitted); *see also* 8 C.F.R. § 103.2(b)(11) (requiring an RFE response to include "all requested materials . . . together at one time"). SCOPS' RFE requested additional evidence of the Beneficiary's educational credentials. But, because the Petitioner's response stated that educational documents were not "readily available" "due to the significant passage of time," we will accept the evidence on appeal.

A letter from the acting principal of the Beneficiary's former secondary school and a letter from an official of the college that the Beneficiary attended indicate his receipt of a high school diploma by the petition's priority date. A preponderance of the evidence therefore demonstrates the Beneficiary's qualifications for the offered job. We will therefore withdraw SCOPS' contrary finding.

C. Ability to Pay the Proffered Wage

Although unaddressed by SCOPS, the Petitioner did not demonstrate its required ability to pay the offered job's proffered wage.

Petitioners must demonstrate their continuing abilities to pay proffered wages, from their petitions' priority dates until their corresponding beneficiaries obtain U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

The Petitioner's labor certification states the proffered wage of the offered business broker job as $29,806 a year. But, contrary to 8 C.F.R. § 204.5(g)(2), the company did not submit one of required forms of evidence to demonstrate its ability to pay the proffered wage. Nor did SCOPS request the materials.

In any future filings in this matter, the Petitioner must provide copies of its annual reports, federal tax returns, or audited financial statements from 2022, the year of the petition's priority date, through 2024. *See* 8 C.F.R. § 204.5(g)(2). The company may also provide any additional evidence or arguments regarding its ability to pay. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

III. CONCLUSION

The Petitioner has not demonstrated that its offered job requires a skilled worker. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.