U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41726827

Date: APR. 28, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a developer of electrical weapons and body cameras, seeks to employ the Beneficiary as a senior software engineer. 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). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least master's degrees or baccalaureates followed by at least five years' progressive experience in a specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered job. Specifically, SCOPS found insufficient evidence that he worked with a certain cloud computing platform or has six years of professional software development experience. On appeal, the Petitioner contends that the job does not require those special skills and job advertisements to U.S. workers excluded them.

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 record lacks evidence supporting the company's claim that it did not advertise the contested skills to U.S. workers. We will therefore withdraw SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as an advanced degree 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 an 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)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (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. 8 C.F.R. § 204.5(k)(3).

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

A petitioner must demonstrate that a beneficiary met all DOL-certified requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is February 29, 2024, the date DOL accepted the 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, USCIS must examine the job-offer portion of an accompanying labor certification to determine the offered job's minimum requirements. USCIS may neither ignore certification terms 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 *contents* of the labor certification") (emphasis in original).

The Petitioner filed the labor certification application after June 1, 2023. *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual ("Effective June 1, 2023, DOL required petitioners to electronically file permanent labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089[, Application for Permanent Employment Certification].") Thus, the labor certification incorporates the offered job's requirements as listed on the company's prior application for a prevailing wage determination (PWD). *See* 20 C.F.R. § 656.40(a); *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. Instead, employers now provide that information on the Application for Prevailing Wage Determination (Form ETA-9141).")

The PWD application states the minimum requirements of the offered senior software engineer job as a bachelor's degree in computer science, electrical engineering, electronics, informatics, or a related field, plus six years' experience in a related occupation. Also, the "Special Skills or Other Requirements" section of the application states: "Software Design & Architecture. Building cloud services. 6 years of professional development experience. Azure, Platform as a Service."

To demonstrate the Beneficiary's purported qualifying experience and special skills, the Petitioner submitted letters from two of his former employers. *See* 8 C.F.R. § 204.5(g)(1) (requiring proof of qualifying experience in the form of letters from employers). One letter confirms that the Beneficiary gained about five and a half years' experience as a senior software engineer, from November 2016 to May 2022. The other states that he also worked as a senior software engineer for an additional one year and seven months, from April 2015 to November 2016.

SCOPS, however, noted that neither letter states the Beneficiary's experience with Azure and that the one from the former employer where he gained one year and seven months' experience does not specify "professional development experience." Thus, SCOPS found that the evidence did not demonstrate the Beneficiary's work with Azure or six years' professional development experience.

In response to SCOPS' request for additional evidence, the Petitioner noted that part E.5 of the labor certification and part D.a.1.c. of its Appendix A state that the company's advertising for the offered job during the labor certification proceedings omitted the special skills of Azure and six years' professional development experience. The Petitioner therefore argues that, although the PWD application lists those two skills as requirements, the offered job does not actually require them.

The record, however, lacks corroborating documentary evidence that the relevant advertisements and recruitment materials for the offered job omitted the need for Azure and six years' professional development experience. We will therefore remand the matter. On remand, SCOPS may wish to ask the Petitioner to submit copies of the specific ads and recruitment materials to evidence that these skills and experience requirements were not part of the recruitment as claimed.

III. CONCLUSION

The record lacks evidence corroborating the Petitioner's claim that it did not advertise the contested skills to U.S. workers.

ORDER: The decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.