U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39894218

Date: DEC. 1, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of regulatory services, seeks to employ the Beneficiary as a regulatory affairs analyst. The company requests her 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 academic or professional degrees above baccalaureates. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

Service Center Operations (SCOPS) denied the petition. SCOPS concluded that the Petitioner did not demonstrate the Beneficiary's qualifying education for the offered job because her master's degree is not in an accepted field of study. On appeal, the company contends that SCOPS approved petitions for beneficiaries in the same job with master's degrees in the same and similar fields and disregarded evidence that the Beneficiary's field equates to a qualifying field.

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 Petitioner has not established the Beneficiary's qualifying education for the offered job. We will therefore dismiss the appeal.

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); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

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 a beneficiary's satisfaction of 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 September 22, 2023, 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 a job's minimum requirements. The Agency 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 *content* of the labor certification") (emphasis in original).

The Petitioner filed its labor certification application on DOL's current version of Form ETA 9089, Application for Permanent Employment Certification. The agency began using this version on June 1, 2023 on its online filing portal called FLAG (Foreign Labor Application Gateway). DOL, "About FLAG," https://flag.dol.gov/about. The form's current version imports job requirement information from a petitioner's corresponding DOL Form ETA-9141, Application for Prevailing Wage Determination (PWD).[1] *See* DOL, Form ETA 9089 Instructions, www.dol.gov/agencies/eta/ foreign-labor/forms.

In the PWD application's "Minimum Job Requirements" section, the Petitioner stated the minimum educational requirements of the offered regulatory affairs analyst job as a U.S. master's degree, or foreign equivalent degree, in "Regulatory Affairs, Biomedical Sciences or equiv[alent]." On the labor certification application, the Beneficiary stated that, in 2018, a U.S. university awarded her a master's degree in pharmaceutics. As proof, the Petitioner submitted copies of her 2018 degree and transcript.

SCOPS found that, contrary to the educational requirements stated on the PWD application, the Petitioner did not demonstrate that the Beneficiary has a master's degree in regulatory affairs or biomedical sciences. SCOPS also found that the company did not establish that the pharmaceutics field equates to the regulatory affairs or biomedical sciences field.

The record supports SCOPS' findings. As previously indicated, the PWD application unambiguously states the offered job's minimum educational requirements as a master's degree in "Regulatory Affairs, Biomedical Sciences or equiv[alent]." The Beneficiary's master's degree in pharmaceutics is not in regulatory affairs or biomedical sciences. The Petitioner submitted evidence that pharmaceutics

[1] Before filing labor certification applications, employers must request PWDs for their offered jobs from DOL. 20 C.F.R. § 656.40(a). Jobs' offered wages must equal or exceed their prevailing wages. 20 C.F.R. § 656.10(c)(1).

is a branch of biomedical sciences. But the company has not explained how the branch field equates to its parent field.

On appeal, the Petitioner contends that USCIS ignored evidence of the Agency's prior approval of similar immigrant visa petitions. The Petitioner argues that USCIS approved seven prior petitions by the company for the same job "where the degree and field of study requirements were exactly the same." The company states:

> While USCIS asserts that "each case is judged on its own merits," the principle of consistency in adjudications must also be upheld. The doctrine of administrative consistency requires that similarly situated petitioners receive similar outcomes unless USCIS can articulate a legitimate basis for distinguishing the current case from prior, substantially similar approvals. These approvals were recent, under the same DOL occupational classification, and reflect no material differences in job duties or requirements.

Two of the seven petitions that the Petitioner cites, however, are distinguishable from this filing. One petition states the job's minimum educational requirements as a master's degree in "Regulatory Affairs, Medical/*Pharma* Sciences or equiv[alent]." Thus, unlike this filing, the petition's minimum educational requirements indicated the job's acceptance of a pharmaceutical-related degree. Also contrary to this filing, the labor certification of the other petition states that the beneficiary had a master's degree in medical biology rather than in a pharmaceutical-related field.

Regarding the five other cited petitions, we acknowledge the importance of administrative consistency. But we need not approve a deficient petition simply because we may have mistakenly done so in the past. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988) ("[The immigration service] is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous."). To conclude otherwise would impermissibly shift the burden of proof from the Petitioner to USCIS to show that the Agency's earlier decisions were mistaken. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. USCIS erred in the prior decisions because, when assessing a beneficiary's qualifications for an offered job, the Agency "must examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). The Petitioner listed that the offered jobs require master's degrees in "Regulatory Affairs, Biomedical Sciences or equiv[alent]." The beneficiaries' master's degrees in pharmaceutics and related fields are not in regulatory affairs or biomedical sciences, nor did the company demonstrate that pharmaceutics or related fields equate to the regulatory affairs or biomedical sciences field.

The Petitioner contends that SCOPS disregarded information in the expert opinion that the company submitted. The U.S. professor of pharmaceutical sciences who wrote the opinion described a "close, highly entwined relationship between Pharmaceutics and Biomedical Sciences." He stated that both fields are "concerned with ... developing ways and means for improving healthcare outcomes through scientific principles, tools, and processes." He said:

> [O]ne could view Pharmaceutics as almost a subfield of Biomedical Sciences, as the development of pharmaceutical products is in line with the overall focus of Biomedical

> Sciences as a whole, much like similarly related fields like biochemistry, genetics, immunology, neuroscience, epidemiology, and may more.

The professor stated that pharmaceutics and biomedical sciences have "frequent overlaps in program requirements" and share common courses in biochemistry, physiology, pharmacology, and other topics. He said that many U.S. universities include both fields in the titles of their relevant academic departments and that the offered job's duties require knowledge of pharmaceutics. The Petitioner states that, by disregarding the expert's analysis, USCIS "redefined its own concepts merely for the purpose of supporting a negative final merits determination."

USCIS may use expert testimony as advisory opinions. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But the Agency makes the final determination and may reject or give less evidentiary weight to an opinion that conflicts with other information "or is in any way questionable." *Id.* The professor's opinion indicates that pharmaceutics and biomedical sciences are related fields. But, contrary to the plain language on the PWD application, the record does not explain how pharmaceutics equates to biomedical sciences.

The Petitioner claims that pharmaceutics and biomedical sciences share "core methodologies" and similar goals, and are taught together within the same academic departments or programs. The company asserts that the professor's statement that pharmaceutics is "almost a subfield" of biomedical sciences "becomes synonymous with equivalence in many contexts." The company claims: "Even if technically distinct, their close relationship leads many to treat them as interchangeable, especially in interdisciplinary research, hiring, or curriculum design. … The distinction becomes more a matter of semantics than substance."

Counsel's assertions, however, are not evidence, and the record does not otherwise support them. *See Braden v. Univ. of Pittsburgh,* 477 F.2d 1, 6 (3d Cir. 1973) ("[S]tatements in briefs unless specifically admitted by the adversary side cannot be treated as record evidence."*); Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("[S]tatements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight.") Moreover, the company has not explained how the pharmaceutics field equates to the biomedical sciences field. The record therefore does not establish the acceptability of the Beneficiary's master's degree in the pharmaceutics field.

The Petitioner also asserts that USCIS had a "preconceived intent" to deny the petition. According to the company, the Agency's justifications:

> were incorrect as a matter of fact and a matter of law, contradicted by the robust evidence on the record, based on analysis and conclusions that lacked any proper support and substance, and that displayed a resolute effort to alternate the admission and overlooking of evidence with its blatant misrepresentation to give the appearance that the denial was reasonable and impartial, rather than arbitrary and capricious.

The Petitioner cites the USCIS Policy Manual, which the company says warns an officer against "predetermin[ing] the kind of evidence he or she thinks the person should be able to submit."

The Petitioner, however, does not provide examples from the record where USCIS purportedly exhibited a preconceived intent to deny the petition or misrepresented facts or arguments. We reviewed the record and did not find sufficient evidence to support the company's claims.

The Petitioner also claims that USCIS imposed a higher standard of proof than a preponderance of the evidence. Again, however, the company does not cite examples, and the record does not support the claim.

The Petitioner further asserts that USCIS deprived the company and the Beneficiary of their Due Process rights. *See* U.S. Const. amend. V. Fifth Amendment Due Process rights, however, do not extend to visa petition proceedings. *Contreras v. Att'y Gen. of U.S.*, 665 F.3d 578, 586 (3d Cir. 2012).

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary meets the offered job's educational requirements. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. A motion's filing will not postpone the decision's effect. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. Section 240 of the Act, 8 U.S.C. § 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for future U.S. visas or other immigration benefits.