U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40606171

Date: DEC. 8. 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a nail salon and spa, seeks to employ the Beneficiary as a senior esthetic technician. The company requests her 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); *Zheng v. Gonzales*, 422 F.3d 98, 105 n.3 (3d Cir. 2005). 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 did not demonstrate the Beneficiary's qualifying training for the offered job. On appeal, the company submits additional evidence and contends that the record establishes her completion of the requisite training.

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 decline to consider the new evidence and agree with SCOPS that the company has not demonstrated the Beneficiary's qualifying training. We will therefore dismiss the appeal.

I. LAW

Immigration as an EB-3 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 an alien's permanent employment in the job would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

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, 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(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); *Jilin Pharmaceutical USA, Inc. v. Chertoff*, 447 F.3d 196, 198 (3d Cir. 2006) (describing the employment-based immigration process in the context of an immigrant visa petition for a multinational executive or manager under section 203(b)(1)(C) of the Act).

II. ANALYSIS

A. The Required Training

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 August 29, 2022, the date DOL accepted the accompanying 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 position, USCIS must examine the accompanying labor certification to determine the job's minimum requirements. USCIS may neither ignore a labor 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 Petitioner's labor certification states the minimum requirements of the offered senior esthetic technician job as:

- a U.S. high school diploma or a foreign educational equivalent;
- three years' experience in the job offered; and
- one month's training in the field of "[p]revention of transmission of blood-borne and fluid-borne pathogens."

The labor certification states that the job's duties include "[u]se of microblading[1] techniques" and "[u]se of sterilization equipment for tools and work area to prevent bloodborne illness."

To prove the Beneficiary's qualifying training, the Petitioner first submitted a copy of a 2013 certificate stating her completion of a two-day training workshop in Vietnam on "preventing the transmission of diseases through blood and biological fluids." The certificate indicates her receipt of training in the required field. But, as SCOPS found in its request for additional evidence (RFE), the two-day training certificate does not indicate the Beneficiary's completion of the requisite one-month training period.

The Petitioner also submitted copies of certificates stating the Beneficiary's completion of "Aesthetic Tattooing" courses in Vietnam. A 2013 "basic certificate" indicates her completion of a two-month course from October 2013 to December 2013. Another certificate states her completion of a one-month class from October 2021 to November 2021. Each certificate reflects training of at least one

[1] The record indicates that "microblading" is a semi-permanent cosmetic tattooing technique used on eyebrows.

month. But neither certificate indicates training in the field of "prevention of transmission of blood-borne and fluid-borne pathogens," as the labor certification specifies.

The Petitioner further provided a copy of a 2015 certificate stating the Beneficiary's completion of 800 hours of "Professional Nail Courses." Eight hundred hours is more than one month. But, like the Aesthetic Tattooing certificates, the certificate for the Professional Nail Courses does not indicate her completion of training regarding the prevention of transmission of blood- and fluid-borne pathogens.

On appeal, the Petitioner argues that the tattooing and nail certificates demonstrate her completion of at least one month of training in the requisite field. Counsel asserts:

> Aesthetic tattooing courses involve training in the prevention of transmission of blood-borne and fluid-borne pathogens and are inherently in the field of the prevention of blood-borne pathogen transmission because tattooing involves direct contact with blood through needles and equipment. Likewise, a nail tech who performs both manicures and pedicures comes in direct contract with blood and this training also involves instruction in the field of the prevention of blood and fluid-borne pathogens.

Counsel's unsubstantiated assertions, however, are not evidence. *See, e.g., 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"). The Petitioner had to substantiate counsel's assertions with documentary evidence that her tattooing and nail courses included the requisite amount of training in preventing transmission of blood- and fluid-borne pathogens. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring documentary evidence to support claimed training).

As previously indicated, the Petitioner provides additional evidence on appeal. But SCOPS' RFE notified the company of the need for more evidence of the Beneficiary's training qualifications and afforded the business a reasonable opportunity to provide additional documentation. The Petitioner neither demonstrates nor even asserts that the materials submitted on appeal were unavailable at the time of the company's RFE response. We therefore decline to consider the additional evidence on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring an RFE response to include submission of all evidence together at one time); *Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal where the petitioner received notice of the required evidence and a reasonable opportunity to provide it).

Even if we considered the Petitioner's appellate evidence, the materials would not demonstrate the Beneficiary's training qualifications for the offered job. The company submitted copies of articles about cosmetic tattoos and blood-borne diseases. But the articles do not specifically mention the Beneficiary or her training credentials. The Petitioner also submitted certificates from two purported former employers of the Beneficiary in Vietnam. But these certificates also do not indicate her receipt of training in the relevant field. Finally, a 2025 affidavit from a "Permanent Makeup" instructor in Vietnam states that the Beneficiary "successfully completed more than 30 days of work and training on infection control and the handling of bloodborne pathogens before August 29, 2022." The affidavit states that the Beneficiary "studied in 2018" and "worked as a teaching assistant at the school from 6-24-2019, serving both as a student and a Permanent Makeup trainee." But the affidavit does not indicate whether the instructor personally taught or trained the Beneficiary, or how the instructor

otherwise knows the facts that the document alleges. *See* 8 C.F.R. § 103.2(b)(2)(i) (requiring affiants to "have direct personal knowledge of the event and circumstances"). The affidavit also lacks details about where, when, and for how long the Beneficiary purportedly received the relevant training. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring letters from trainers to include "a description of the training received"). The Petitioner's evidence on appeal therefore would not establish the Beneficiary's qualifying training for the offered job.

The Petitioner has not demonstrated that the Beneficiary met the minimum training requirements of the offered job. We will therefore affirm the petition's denial.

B. The Required Experience

Although unaddressed by SCOPS, the Petitioner also has not demonstrated the Beneficiary's qualifying employment experience for the offered job.

As previously indicated, the Petitioner's labor certification states that the offered job of senior esthetic technician requires at least three years of experience in the job offered. The labor certification states that the company will not accept experience in an alternative occupation.

On the labor certification, the Beneficiary attested that, by the petition's priority date, she gained more than seven years of full-time qualifying experience. She stated that she worked as a "Nail Decoration Supervisor" at a nail salon in Vietnam from January 2015 through August 2022. She did not list any other employers or experience on the certification.

To support claimed qualifying experience, a petitioner must submit letters from an alien's former employers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must include the employers' names, titles, and addresses, and describe the alien's experiences. *Id.*

The Petitioner first submitted a February 2025 letter from the Vietnamese nail salon's owner stating that the Beneficiary had been working there as a manager since January 2015. But, contrary to the Beneficiary's attestation on the labor certification, the letter indicates that she did not work on a full-time basis. *See* Barbara Ann Farmer, DOL Adm'r for Reg'l Mgmt., *DOL Field Memorandum No. 48-94*, 2 (May 16, 1994) ("Full-time work in most occupations ranges from 35 to 40 hours per week.") Rather, the letter states: "She has been working 3 days a week and ten hours per day."[2]

Also, as previously indicated, the Petitioner submitted certificates from two purported former employers of the Beneficiary in Vietnam. One of these certificates, dated in October 2024, is from the nail salon that provided the previously submitted letter. Like the nail salon's letter, its certificate indicates the business's employment of the Beneficiary on a part-time basis. But the certificate states her "Date of employment start" in May 2018, not January 2015 as the nail salon's letter indicates.

[2] For qualifying experience purposes, part-time experience counts less than full-time experience. For example, 29.5 months of 25-hour-a-week experience equates to 18.4 months of full-time qualifying experience (25/40 x 29.5). *Matter of I Grand Express*, 2014-PER-00783, at ** 3-4 (BALCA Jan. 26, 2018).

Further, the other employer certificate is from a Vietnamese tattoo business, which states that it began employing the Beneficiary part-time as a manager in October 2021. The labor certification application form, submitted in August 2022, required the Beneficiary to "[l]ist all jobs the alien held during the past 3 years." But she did not list employment at the tattoo business on the labor certification application. *See Matter of Leung*, 16 I&N Dec. 12, 14-15 (Distr. Dir. 1976), *disapp'd of on other grounds*, *Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (discounting testimony of qualifying employment where an adjustment-of-status applicant omitted the experience from the labor certification on his behalf). The application also omits her purported work as a "teaching assistant," beginning in June 2019, as stated in the instructor's affidavit. These evidentiary discrepancies cast significant doubt on the Beneficiary's attestations on the labor certification application and her claimed qualifying experience for the offered job. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

SCOPS did not notify the Petitioner of these evidentiary inconsistencies. Thus, we will not base the appeal's dismissal on them. But, in any future filings in this matter, the company must explain the evidentiary discrepancies and submit independent objective evidence that, by the petition's priority date, the Beneficiary met the offered job's minimum experience requirements. *See Matter of Ho*, 19 I&N Dec, at 591.

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's training qualifications for the offered job. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

NOTICE: This is the final decision in this matter. A motion's filing would 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. *See* 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.