U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40101503

Date: DEC. 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks to employ the Beneficiary as an engineer 4, software development and engineering, under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the offered position requires an advanced degree or its equivalent for the requested classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

II. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign worker in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the alien 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

Unless accompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for an advanced-degree professional must include a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(i). For EB-2 classification, a labor certification "must demonstrate that the job requires a professional holding an advanced degree." *Id.*

The term "advanced degree" means:

> any United States professional or academic degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressively responsible experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(2).

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

In this case, section H of the labor certification states the following with respect to the requirements for the proffered position of engineer 4:

H.4	Education: Minimum level required:	Bachelor's Degree
H.4-B	Major Field of Study:	Computer Science, Engineering or a related technical field
H.5	Is training required for the job?	No
H.6	Is experience in the job offered required?	No
H.7	Is an alternate field of study acceptable?	No
H.8	Is an alternate combination of education and experience acceptable?	No
H.9	Is a foreign educational equivalent acceptable?	Yes
H.10	Is experience in an alternate occupation acceptable?	Yes
H.10-A	Number of months experience:	60 months
H.10-B	Job title of the acceptable alternate occupation:	Any software developer position

H.14 Specific skills or other requirements:

Experience in Item H.10 must include five (5) years of experience developing software utilizing Java; developing Java code within an AWS infrastructure using Lambda; and utilizing Concourse CI/CD.

Here, the labor certification states the educational requirements of the offered position of engineer 4 as a U.S. bachelor's or a foreign equivalent degree in computer science, engineering, or a related technical field. The labor certification also states the minimum experience requirements of the offered position as 60 months in the alternate occupation of any software developer position. These minimum requirements are also consistent with the Form ETA-9141, Application for Prevailing Wage Determination, in the record. At Part F.b of the Form ETA-9141, the Petitioner stated that the offered position of engineer 4 requires a minimum of a U.S. bachelor's degree and 60 months of experience in any software developer position.

SCOPS, however, interpreted Part H.6 of the labor certification to indicate the Petitioner's acceptance of a bachelor's degree with no training or experience, and thus less than an advanced degree equivalent, for the offered position. SCOPS therefore concluded that the labor certification does not support the requested classification of advanced degree professional.

On appeal, the Petitioner asserts that SCOPS incorrectly interpreted Part H of the labor certification. The Petitioner states that, while Part H.6 correctly indicates that the offered position does not require experience *in the job offered* as an engineer 4, Part H.10 correctly indicates that 60 months of experience in any software developer position, in combination with the bachelor's degree required in Part H.4, is required. The Petitioner states that, as indicated on the labor certification, it will not accept less than a bachelor's or foreign equivalent degree and 60 months of experience for the offered position.

The record includes the ETA Form-9141 to support the Petitioner's assertion that the offered position requires experience in an alternate occupation. However, the Petitioner has not submitted its recruitment materials underlying the labor certification, including the actual online and print advertisements for engineer 4 to demonstrate that it consistently required a bachelor's degree and five years of experience in an alternate occupation to meet the definition of advanced degree. Without such evidence we cannot fully determine the veracity of the Petitioner's claim regarding the actual minimum requirements for the offered position and eligibility for the requested advanced degree classification.

As SCOPS did not request any evidence from the Petitioner to clarify its five-year experience requirement for the job offered, we will remand this case for further consideration. SCOPS may request additional evidence, including online and print advertisements and the posted notice of job opportunity, reflecting the Petitioner's actual minimum requirements for the position of engineer 4. SCOPS may also address and request additional evidence on any further issues that may be deemed relevant.

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