U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41106296

Date: FEB. 9. 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a supermarket and restaurant, seeks to employ the Beneficiary as a store manager. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor an alien for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum experience requirements for the offered position. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or evidence to us within 30 days of filing the appeal. As of this date, we have not received a brief or additional evidence. Therefore, we will consider the record complete.

On the Form I-290B, the Petitioner included the following statement as the basis of the appeal:

> The Petitioner provided evidence of the Beneficiary's prior qualifying employment experience, and USCIS erred in its review of the documents, concluding incorrectly that the Beneficiary did not qualify for the position. To the contrary, the evidence in the record demonstrates his qualifications based on prior experience and education. The USCIS decision is in error and should be reversed.

As the Petitioner's statement on the Form I-290B identifies an erroneous statement of fact, we will consider the Petitioner's statement in lieu of a brief or additional evidence.

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 dismiss the appeal.

I. LAW

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

The Petitioner requests classification of the Beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states that to qualify for skilled worker classification:

> … the petition must be accompanied by evidence that the [beneficiary] meets the educational, training or experience, and any other requirements of the individual labor certification … The minimum requirements for this classification are at least two years of training or experience.

To be eligible for skilled worker classification, therefore, the Beneficiary must meet all specific requirements of the labor certification and have at least two years of relevant experience (or training). All requirements must be met by the petition's priority date, which in this case is January 17, 2023.[1] *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case section H of the labor certification (Job Opportunity Information) specifies the following with respect to the requirements for the job of administrative assistant:

4.	Education: minimum level required:	Bachelor's
4-B.	Major field of study	Any field
5.	Is training required for the job?	No
6.	Is experience in the job offered required?	Yes
6-A.	Number of months required?	24
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No

Part J of the labor certification states that the Beneficiary earned a bachelor's degree in mechanical engineering in the Philippines in 1997.

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied as of the priority date.

In Part K of the labor certification, the Petitioner asserts that it has employed the Beneficiary in the offered position since August 14, 2014. The labor certification also states that the Beneficiary was employed as a store manager with [redacted], from August 6, 2007 to July 10, 2014.

The initial evidence submitted with the petition included a bachelor of science degree and academic transcripts awarded to the Beneficiary by [redacted] in the Philippines. The initial evidence did not include documentary evidence of the Beneficiary's employment experience.

SCOPS issued a request for evidence (RFE), requesting that the Petitioner submit evidence that the Beneficiary possesses the required 24 months of experience in the job offered. In response to the RFE, the Petitioner stated:

> [The Beneficiary] did not obtain employment verification letters before joining [the Petitioner] 11 years ago, and [the Beneficiary's previous employers] do not keep records longer than required after the termination of employment (Philippines requires employers to maintain records for three years after termination, and Singapore requires record keeping for one year after termination).

To support the Beneficiary's claimed experience, the Petitioner submitted "professional certificates awarded to [the Beneficiary] during his tenure ..., including recognition from his employer and training required by his employer."

Following review of the Petitioner's response to the RFE, SCOPS concluded that the record demonstrated that the Beneficiary "has 12 days of employment experience which is 718 days less than the required 730 days."

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
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> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

If a required document is unavailable, a petitioner must demonstrate this and submit secondary evidence pertinent to the facts at issue. If secondary evidence is also unavailable, the petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence and submit two or more affidavits from persons who have direct personal knowledge of the circumstances. *See* 8 C.F.R. § 103.2(b)(2)(i).

Here, the professional certificates in the record do not include the dates of employment or the Beneficiary's job title. Nor do the certificates include any description of the Beneficiary's job duties. Therefore, we are precluded from determining that the Beneficiary possesses the required 24 months of experience in the offered position of store manager.

The Petitioner has not established with independent, objective evidence that the Beneficiary possesses the required 24 months of experience in the offered position, as required by the labor certification. Therefore, we will dismiss the appeal on this basis.

Although not addressed by SCOPS, and not a basis for our decision, the Petitioner has also not established that the Beneficiary possesses the minimum education required for the offered position as stated on the labor certification. The record includes the Beneficiary's foreign diploma indicating that he possesses a bachelor's degree from a foreign university. The record does not include an evaluation of the foreign degree demonstrating its equivalence to a U.S. degree. Therefore, we are precluded from determining that the Beneficiary meets the minimum education requirement for the position of store manager, as stated on the labor certification. This issue must be addressed with any further filings.

Although not addressed by SCOPS, the Petitioner has not established its continuing ability to pay the proffered wage to the Beneficiary. A petitioner must demonstrate its continuing ability to pay an offered job's proffered wage, from a petition's priority date until a beneficiary obtains 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.*[2]

When determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year, beginning with the year of the petition's priority date. *See generally* 6 *USCIS Policy Manual* E.(4)(C), www.uscis.gov/policy-manual. If a petitioner did not annually pay a beneficiary the full proffered wage, or did not pay a beneficiary at all, the Agency considers whether the business generated annual amounts of net income or net current assets sufficient to pay any differences between the proffered wage and the wages paid. *Id.* If net income and net current assets are insufficient, USCIS may consider other factors potentially affecting a petitioner's ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).[3]

The Petitioner's labor certification states the proffered wage of the offered job of store manager as $57,554 per year, and the petition's priority date is January 17, 2023.

While the record includes the Beneficiary's 2023 tax return and several pay stubs issued in 2024, the record does not include evidence that the Petitioner paid the Beneficiary the full proffered wage in either year.[4] The record includes the Petitioner's 2022 tax return, which is before the 2023 priority date.

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[2] If a petitioner employs at least 100 people, it may submit a statement from a financial officer establishing its ability to pay a proffered wage. 8 C.F.R. § 204.5(g)(2). The record does not indicate – nor does the Petitioner claim – the company's employment of at least 100 people.

[3] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, Inc. v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Four Holes Land & Cattle, LLC v Rodriguez*, No. 5:15-cv-03858, 2016 WL 4708715, **X (D.S.C. Sept. 9, 2016).

[4] The Beneficiary's tax return includes an "Income Report Summary" listing wages from the Petitioner above the proffered wage in 2023. However, the record does not include any Internal Revenue Service Form W-2, Wage and Tax Statement, for any year.

Additionally, USCIS records show the Petitioner's filing of Forms I-140, Immigrant Petitions for Alien Workers, for more than 30 other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). This Petitioner must therefore demonstrate its ability to pay the combined proffered wages of this petition and any others that were pending or approved at the time of this petition's January 17, 2023 priority date or filed thereafter. *See Patel v. Johnson*, 2 Fed.Supp.3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where a petitioner did not demonstrate its ability to pay the combined proffered wages of multiple Form I-140 petitions).

Although also not addressed by SCOPS, and not a basis for our decision, the Petitioner must demonstrate that a valid employment relationship exists, and that a bona fide job opportunity is available to U.S. workers, pursuant to 20 C.F.R. §§ 656.10(c)(8) and 656.3. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). 20 C.F.R. § 656.3 specifically provides that an investor may not be considered an employee for the purposes of labor certification employment. The DOL requires the disclosure of any ownership interest of the alien by marking "yes" to question at Part C.9 on the labor certification. Here, the record demonstrates that the Beneficiary was admitted to the United States as a treaty investor in E-2 nonimmigration classification for employment with the Petitioner. In any further filings, the Petitioner must document whether the Beneficiary is an investor of the Petitioner, and whether he has any ownership interest in the company.

III. CONCLUSION

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

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.