U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41461786

Date: FEB. 24, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a nonprofit health care company, seeks to employ the Beneficiary as a registered nurse. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). U.S. employers may sponsor aliens in this category to permanently work in jobs requiring at least a bachelor's degree. *Id.*

SCOPS denied the petition, concluding that the Petitioner did not complete the Notice of Filing to meet the required posting timeframe, and, therefore, the petition was not accompanied by a proper labor certification. The matter is now before us on appeal under 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 sustain the appeal.

This petition is for a Schedule A occupation. A Schedule A occupation is one codified at 20 C.F.R. § 656.5(a) for which DOL has determined that there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in such occupations. The current list of Schedule A occupations includes professional nurses. *Id.* Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified Form ETA 9089, Application for Permanent Employment Certification, from the DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified Form ETA 9089 in duplicate. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15.

A petition for a Schedule A occupation must include a labor certification application. 20 C.F.R. § 656.15(a). To obtain an application's approval, a petitioner must demonstrate that it provided a "notice of filing" (NOF) to either the bargaining representative of its other employees in the occupation, or – if no such representative exists – to the employees themselves. 20 C.F.R. § 656.15(b)(2). When notifying employees, a petitioner must post a NOF at the worksite for at least 10 consecutive business days. 20 C.F.R. § 656.10(d)(1)(ii). A NOF must be provided between 30 and

180 days before filing the labor certification application with the petition. 20 C.F.R. § 656.10(d)(3)(iv).

Because a union does not represent nurses at the petitioning entity, the company posted a NOF to employees at the relevant worksites from August 22, 2025 to September 16, 2025. The company filed the labor certification application with the petition on October 10, 2025 – 24 days after the removal of the NOF's posting. SCOPS therefore concluded that "the notice was not provided between 30 and 180 days before filing the application" as required by 20 C.F.R. § 656.10(d)(3)(iv).

On appeal, the Petitioner contends that it complied with the regulations because "the tenth consecutive business day of posting" occurred more than 30 days before the October 10, 2025 filing date, consistent with the regulations.

DOL Frequently Asked Questions state that "the Notice of Filing must be posted for 10 consecutive business days *during* the 30 to 180 day time window prior to filing the application." DOL, Emp't & Training Admin., *OFLC Frequently Asked Questions and Answers*, "Notice of Filing," No. 10, https://wayback.archive-it.org/23696/20250813192847/https:/foreignlaborcert.doleta.gov/#q!174 (emphasis added). Additionally, "where an employer is open for business on a Saturday, Sunday, and/or holiday, the employer may include the Saturday, Sunday and/or holiday in its count of the 10 consecutive business day period required for the posting of the Notice of Filing." *Id.* The Petitioner has demonstrated that it posted its NOF for 10 consecutive business days during the relevant 30- to 180-day window prior to filing.

For the foregoing reasons, the Director erred in denying the labor certification application and petition based on the Petitioner's timing of its NOF posting. We have examined the company's filing notice and find that it otherwise complies with the applicable regulations at 20 C.F.R. § 656.10(d)(3)(i-iv). The Petitioner has demonstrated that the petition meets all the other requirements for the category, that the Beneficiary has the required education, training, and experience for the position offered and that the Petitioner has the ability to pay the required proffered wage. We will therefore sustain the appeal.

ORDER: The appeal is sustained.