U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36617440

Date: JUNE 2, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an educational services business, seeks to employ the Beneficiary as an IT manager 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). This employment-based classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the accompanying certification from the U.S. Department of Labor (DOL) supports the offered position. 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.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from DOL. *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id*. Labor certification also indicates that the employment of an alien will not harm wages and working conditions of U.S. workers with similar jobs. *Id*.

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the requirements of a certified position and a requested immigrant visa classification. If USCIS approves the petition, the beneficiary may finally 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 petition for an advanced degree professional must generally be accompanied by a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(i). A labor certification remains valid only for the particular job opportunity, alien, and geographic area of intended employment stated on it. 20 C.F.R. § 656.30(c)(2). A petitioner must establish its intent to employ the beneficiary in accordance with the terms and conditions of the labor certification. *See Matter of Izdebska,* 12 I&N Dec. 54 (Reg'l Comm'r 1966). If a job opportunity changes during a petition's pendency, the validity of an accompanying labor certification may expire. *Matter of United Inv. Grp.*, 19 I&N Dec. 248, 249 (Comm'r 1984).

For a job offer to remain as DOL-certified, "the facts of employment or intended employment must remain as stated and the specific employer-employee relationship stipulated and intended must continue both in present fact and prospectively." *Id.* USCIS must assess whether "there has been any other material change in the job opportunity covered by the original labor certification." 6 *USCIS Policy Manual* E.6(A), https://www.uscis.gov/policy-manual. A new approval of a labor certification is required where there is a "material change in the job opportunity covered by the original permanent labor certification." *Id.* at E.6(D)(1).

In this case, the labor certification was filed with DOL on May 20, 2023, and certified on May 31, 2024, identifying the offered position as "Senior IT Engineer" with the following terms and conditions:

- In section F (Prevailing Wage Information), DOL categorized the proffered position under the Occupational Information Network's standard occupational code (O*NET-SOC) of 15-1252 with the occupational title of Software Developers, a skill level of Level IV, and a prevailing wage of $134,118 per year;
- In section G (Wage Offer Information), the offered wage is between $134,118 to $149,076 per year; and
- In section H, (Job Opportunity Information), the job duties are stated as:

  [The Petitioner] seeks Senior IT Engineer in [redacted] IL to propose and derive working solutions for university student- and staff-facing applications. Design, develop, build, test, and drive Salesforce integration and application components. Define an integration strategy with architects and other development teams to meet business needs. Provide testing of applications. Provide technical support to teams in driving applications development. Utilize MuleSoft (including RAML in Mule, Mule ESB, Connectors for Integration, Anypoint studio, and Dataweave), Tibco (including BW, ADB, Salesforce, and JMS), and Informatica (including Mapping Task, TaskFlows, and Mappings). Up to 100% telecommuting permitted.

However, as pointed out by SCOPS in a notice of intent to deny (NOID) the petition, the labor certification identifies the offered position title as "Senior IT Engineer," while the petition identifies a different position title, "IT Manager." Part 6 of the petition included basic information about the proposed employment, indicating wages as $134,118 per year and the "Nontechnical Job Description" as:

> Oversee IT department and ensure efficient and effective operation of technology

landscape. Lead team of IT professionals, including hiring, training, and performance management. Foster a collaborative and innovative work environment that encourages teamwork and knowledge sharing. Oversee day-to-day operations of IT department, ensuring the stability, security, and reliability of the technology stack. Develop and implement IT policies, procedures and standards to ensure compliance with industry best practices and regulatory requirements. Monitor system performance, identify areas for improvement, and implement necessary changes to optimize IT operations. Develop and manage the IT department's budget, ensuring optimal allocation of resources to support strategic initiatives and operational needs. Identify cost-saving opportunities, negotiate vendor contracts and evaluate the effectiveness of IT investments. Create value for the company, including IT-centric cost management and business results. Set organizational direction within IT area. Develop and implement a strategic technology and IT operational roadmap aligned with business objectives. Provide recommendations on technology investments, upgrades and enhancements to support business growth and efficiency. Stay abreast of security threats and implement measures to safeguard data and systems. Collaborate with executive management and other senior leaders to align IT initiatives with business objectives. Establish and communicate a vision or the organization. Align with IT and digital strategy, build game plan, communicate and deliver on the strategy.

In response to the NOID, the Petitioner stated that "looking beyond the mere job title the two positions are in fact materially equivalent and ... the change results from an in-line career progression." The Petitioner submitted a letter from its Director, Software and Services stating, "Both the Senior IT Engineer and IT Manager roles share a material similarity in scope and function ... The key difference is that [the Beneficiary's] responsibilities have grown in scope, reflecting his career progression and the trust we have placed in his ability to manage larger teams and projects." The Petitioner further stated, "The only real difference between the jobs is that the Senior Software Engineer job, albeit a senior position, has less management responsibility while the IT Manager has slightly more managerial responsibility."

SCOPS concluded that "the record does not establish that the Petitioner has offered the Beneficiary the same job opportunity as the Senior IT Engineer position listed in Part H of the ETA Form 9089 with respect to the job duties to be performed." However, when reviewing the job opportunity covered by the original labor certification, USCIS must assess a petition "to ensure that the position offered is the same *or similar* to the position that the DOL certified and that the beneficiary meets the qualifications for the position." 6 *USCIS Policy Manual, supra* (emphasis added). SCOPS should have reviewed the petition to ensure the job opportunity certified in the labor certification is the "same or similar," instead of the "same," and whether there has been a material change to the position. Therefore, we withdraw the finding of SCOPS on this issue.

On appeal, the Petitioner asserts that SCOPS "should have assessed the facts in the record to determine not just if the job was the same but also if it was 'the same or similar' or 'materially the same' in accordance with the agency's own internal guidance." Although we agree with the Petitioner that the Director did not properly analyze the evidence in the record, we are precluded from making a positive determination that the job opportunity described in the labor certification is the same or similar to the position described in the petition. While the Petitioner asserts that "the two roles are materially the

same," the Petitioner also states that the role of IT Manager involves a higher level of managerial responsibility.

The Petitioner asserts that both positions are identified under O*NET-SOC 15-1252, which encompasses the occupational title of software developer. The Petitioner further asserts that when DOL assigned the prevailing wage for Senior IT Engineer at Level IV, it accepted that the Senior IT Engineer role has "some level of managerial work." However, the Petitioner's job comparison chart states that 20% of the Senior IT Engineer responsibilities includes management, while this comprises 50% of the responsibilities of an IT Manager. The chart further states that 60% of the Senior IT Engineer responsibilities include systems development, but this makes up only 20% of the responsibilities of an IT Manager. The additional management responsibilities in the IT Manager role include duties such as "hiring, training and performance management" and "negotiat[ing] vendor contracts," neither of which was listed in the role of Senior IT Engineer.

It is unclear whether the shift in management and development responsibilities results in a different occupational classification for the role of IT Manager. For example, O*NET-SOC 11-3021 for computer and information systems managers includes the job title of "IT Director." [1] This position includes duties similar to the Petitioner's description of the role of IT Manager, such as, "Direct daily operations of department, analyzing workflow, establishing priorities, developing standards and setting deadlines." Without more information and details regarding the role of IT Manager within the Petitioner's organization, we are precluded from determining that the position on the labor certification is the same or similar to the offered position, or whether there has been any other material change in the job opportunity covered by the original labor certification.

It is not clear from the record whether the Petitioner, when advertising and hiring generally for positions of Senior IT Engineer, imposes the same education, experience and special skills requirements for both positions, and whether both positions would receive a wage under the same O*NET classification resulting in the same wage determination. If, as IT Manager, the Beneficiary would supervise other workers and have increased managerial responsibilities, that too could change the required prevailing wage determination, and result in a material difference. The record does not contain a prevailing wage determination for the original position. Nor does the record contain job advertisements, or other related evidence, for either position to make a comparison.[2]

---

[1] *See* O*NET Summary Report for "Computer and Information Systems Managers," https://www.onetonline.org/link/summary/11-3021.00 (visited Feb. 19, 2025).

[2] The labor certification process requires an employer to test the labor market by placing advertisements for an offered position and soliciting applications from U.S. workers. *See* 20 C.F.R. § 656.17(e) (stating requirements for "pre-filing recruitment" of job opportunities). DOL "makes a determination either to grant or deny the labor certification on the basis of whether or not . . . [t]here is in the United States a worker who is able, willing, qualified, and available for and at the place of the job opportunity." 20 C.F.R. § 656.24(b)(2). Thus, "[t]he outcome of this labor market test is of paramount importance." *See, e.g., Zodiac Solutions*, 2015-PER-00179, slip op. at *3 (BALCA Feb. 22, 2019). Accordingly, DOL has specific advertising requirements. For example, an ad for an offered position in a newspaper or professional journal must "[n]ot contain wages or terms and conditions of employment that are less favorable than those offered to the alien." 20 C.F.R. § 656.17(f)(7).

For the reasons discussed above, we will remand this matter for consideration of these and any other factors SCOPS may deem pertinent in determining whether the job opportunity described in the labor certification is the same or similar to the position described in the petition, whether it has materially changed, and thus whether the labor certification is valid for the petition.

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