U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38419220

Date: JUNE 4, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an advertising firm, seeks to employ the Beneficiary as an "associate strategist." The company requested her classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 C.F.R. § 1153(b)(2)(A). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring master's degrees or baccalaureates followed by at least five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

Service Center Operations (SCOPS) denied the petition, concluding that, contrary to the requested immigrant visa category's requirements, the offered job does not require a master's degree or a baccalaureate followed by at least five years' progressive experience. On appeal, the Petitioner contends that it inadvertently selected the wrong visa category on the petition form and that U.S. Citizenship and Immigration Services (USCIS) should classify the Beneficiary as a "professional" to work in a job requiring at least a baccalaureate. *See* section 203(b)(3)(A)(ii) of the Act.

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 conclude that USCIS policy required the company to request amendment of an erroneously requested classification before the decision's issuance. We will therefore dismiss the appeal.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain U.S. Department of Labor (DOL) certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and an alien's employment in the position will not harm wages or working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to USCIS. *See* 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(k)(3); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

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 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

The job-offer portion of a labor certification for an advanced degree professional "must demonstrate that the job requires a professional holding an advanced degree." 8 C.F.R. § 204.5(k)(4)(i). The term "profession" includes "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The term also refers to "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).

The term "advanced degree" means:

> any United States academic or professional 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 progressive experience in the specialty shall be considered the equivalent of a master's degree.

Id.

The Petitioner's labor certification states the primary requirements of the offered job of associate strategist as a U.S. bachelor of science degree or a foreign equivalent degree in strategic communication or a related field, plus 27 months' experience in the offered job or as a "Digital Strategy Intern." The labor certification also states the company's acceptance of an alternate combination of education and experience in the form of a master of science degree in strategic communication or a related field, plus three months' experience.[1]

Without issuing a request for additional evidence (RFE) or a notice of intent to deny (NOID) the petition, SCOPS denied the filing. SCOPS stated that "it appears that the petitioner is willing to accept an individual with lesser qualifications than the classification requested."

SCOPS correctly found that the offered job does not require an advanced degree professional. The labor certification states that a bachelor's degree and 27 months' experience qualifies a person for the job. Because the job requires less than a master's degree or a baccalaureate followed by five years of progressive experience, the position does not qualify for the requested immigrant visa category.

[1] The record does not support the offered job's primary requirement of 27 months' experience in the offered job or as a digital strategy intern. The Beneficiary attested on the labor certification application that the Petitioner hired her in the offered job after she had gained only three months' experience as a digital strategy intern. *See* 20 C.F.R. § 656.17(i)(2) (stating that a labor certification employer "must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity").

On appeal, the Petitioner contends that it intended to seek the Beneficiary's classification as a professional under section 203(b)(3)(A)(ii) of the Act. But the Petitioner states that, on the Form I-140, Immigrant Petition for Alien Workers, the company "inadvertently misclassified the petition." The company does not detail how the purported clerical error occurred. But it states that it "erroneously" requested the Beneficiary's classification as an advanced degree professional.

The Petitioner argues that, by denying the petition without first issuing a RFE or NOID, SCOPS violated 8 C.F.R. § 103.2(b)(8). The company contends that USCIS can only deny a petition without a RFE or NOID "if the deficiency is one that cannot be cured by the submission of additional evidence." According to the company, USCIS policy requires officers to issue RFEs or NOIDs unless a petition is "legally deficient, meaning it lacks a statutory basis for approval (e.g., cases involving fraud or statutory ineligibility)." The Petitioner states: "Since the denial was based on a curable procedural error – an inadvertent misclassification of the visa category – USCIS was obligated to provide an opportunity to correct the filing before issuing a denial."

Contrary to the Petitioner's argument, however, 8 C.F.R. § 103.2(b)(8) does not limit USCIS' ability to deny a petition without a RFE or NOID. The regulation states that, "[i]f all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may," besides issuing a RFE or NOID, "deny the benefit request for ineligibility." C.F.R. § 103.2(b)(8)(iii). USCIS policy states:

> if the benefit request does not have a legal basis for approval, and the officer determines that there is no possibility that additional information or explanation will establish a legal basis for approval, then the officer generally should deny the benefit request without first issuing an RFE or NOID.

1 *USCIS Policy Manual* E.6(F)(1).

The Petitioner claims that this case required an RFE or NOID because the petition's denial stems from "a curable procedural error – an inadvertent misclassification of the visa category." But, at the time of the petition's denial, SCOPS did not know an error had purportedly occurred. Rather, because the job requirements on the company's labor certification did not require an advanced degree professional, the record indicated no "legal basis" for the petition's approval and "no possibility that additional information or explanation will establish a legal basis for approval." *See* 1 *USCIS Policy Manual* E.6(F)(1).

Moreover, USCIS has a specific policy regarding changing visa classification selections to correct clerical errors. USCIS instructs petitioners to examine the categories listed on their petition receipt notices and to "immediately" notify the Agency of any wrongly listed categories. *See* USCIS, "Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Workers," www.uscis.gov/forms/all-forms/petition-filing-and-processing-procedures-for-form-i-140-immigrant-petition-for-alien-workers. The instructions stress: "We cannot change the visa category if we have already made a decision on your Form I-140." *Id.*

Contrary to this policy, the record does not indicate that the Petitioner notified USCIS of the company's claimed clerical error on the Form I-140 before the decision's issuance. Counsel's cover

letter in the initial filing stated that the petition sought the Beneficiary's classification as a professional. But, on the Form I-140, the Petitioner selected the advance degree professional category and did not notify the Agency of the purported error on the form before the decision's issuance. We therefore decline to change the petition's designated immigrant visa category.[2]

Also, although unaddressed by SCOPS, the Petitioner has not demonstrated its required ability to pay the offered job's proffered wage of $72,925 a year. A petitioner must establish its ability to pay a proffered wage "at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence." 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay generally must include copies of a petitioner's annual reports, federal tax returns, or audited financial statements. *Id.* This petition's priority date is March 20, 2023, the date DOL accepted the Petitioner's labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

The Petitioner's initial filing lacked regulatory required evidence of its ability to pay the proffered wage in 2023, the year of the petition's priority date. The record also does not indicate such evidence's unavailability at the time of the petition's filing in June 2024. Thus, in any future filings in this matter, the company must submit copies of annual reports, federal tax returns, or audited financial statements for 2023 and, if available, 2024. The company may also submit additional evidence of its ability to pay in relevant years, including documentation in support of the factors indicated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

III. CONCLUSION

Contrary to USCIS policy, the Petitioner did not notify the Agency of the company's purportedly mistaken selection of the immigrant visa category on the Form I-140 until after the decision's issuance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

[2] The Petitioner asserts that, if we dismiss the appeal, the company would have to obtain a new labor certification for the offered job. But there are "exceptions" to the 180-day validity periods of labor certifications. *See* 6 *USCIS Policy Manual* E.6(B)(2).