U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37434985

Date: JUN. 16, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a restaurant, seeks to employ the Beneficiary as a food service manager. It requests his classification as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor an alien for lawful permanent resident status to work in a position that requires at least two years of training or experience.

Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Beneficiary meets the minimum requirements for the offered position as stated on the labor certification. 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 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 Department of Labor. *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 national 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 (Form I-140) 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 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

At issue on appeal is whether the Beneficiary possessed the required work experience for the offered position on the priority date, which in this case is August 23, 2022.[1]

Section 203(b)(2)(A)(i) of the Act makes immigrant visas available to qualified immigrants who can perform skilled labor (requiring at least two years training or experience) for which qualified workers are not available in the United States. In addition, 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 alien meets the educational, training or experience, and any other requirements of the individual labor certification."

Therefore, to be eligible for skilled worker classification, a beneficiary must have at least two years of relevant experience (or training) *and* must possess all the required education, training, and experience for the offered position as set forth on the labor certification. All requirements must be met by the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

USCIS examines the job offer portion of the labor certification to determine a position's minimum requirements. We may neither disregard a term on the labor certification nor impose additional, unstated requirements. *See Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that DOL bears the authority for setting the content of the labor certification") (emphasis in original).

The Petitioner's labor certification states that the offered job of food service manager requires at least two years' experience "in the job offered." The Petitioner indicated that it would not accept experience in an alternate occupation. Unless a labor certification specifies otherwise, qualifying experience means full-time experience. *Matter of Boodell & Domanskis, LLC*, 2012-PER-01275, *3 (BALCA May 11, 2016) (accepting part-time experience as qualifying experience only because the labor certification so specified). The Petitioner therefore must demonstrate that, by the petition's priority date, the Beneficiary had at least two years of full-time, qualifying experience.

On the labor certification application, the Beneficiary attested that, by the petition's priority date, he had gained over 25 months of part-time experience. Specifically, he stated that he was employed as an assistant cook manager by [redacted] in Saudi Arabia from May 20, 2012, until July 1, 2014, and that he worked for 14 hours per week during this period. The Beneficiary listed no other employment or qualifying experience on the labor certification.

To demonstrate qualifying experience, a petitioner must submit a letter from the beneficiary's former employer(s). 8 C.F.R. § 204.5(l)(3)(ii)(A). Each letter must include the employer's name, title, and address, and describe a beneficiary's experience. *Id.*

The Petitioner provided a May 2023 experience letter from the owner of [redacted] He stated, in part: "I hereby verify that [the Beneficiary] worked in our Restaurant in [redacted] for the

[1] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

period of May 2012 to July 2014 and worked over his school breaks between 2015-2019 (summer/Winter)."

In a request for evidence (RFE) issued in September 2024, SCOPS advised the Petitioner of the following deficiencies and potentially derogatory information:

- At Section K of the labor certification, the Beneficiary stated he worked only part time for [redacted] and he declared under penalty of perjury that this information was true and correct by signing the "alien declaration" at Section L.
- For labor certification purposes, part-time employment equals only half the value of full-time employment. Thus, the record did not indicate the Beneficiary had 24 months of full-time experience as required.
- The labor certification does not indicate the Beneficiary worked for [redacted] after July 2014 even though the experience letter, which does not provide exact dates, indicates he worked for the restaurant "during school breaks" after that date.
- The Beneficiary's previous nonimmigrant visa applications filed with the U.S. Department of State (DOS) contained information that is inconsistent with the Beneficiary's employment history as represented on the labor certification and in the experience letter. Specifically, the Beneficiary submitted Forms DS-160 to DOS in April 2014 and June 2019 and on both occasions indicated that he was a student and reported no current or previous employment.

SCOPS instructed the Petitioner to provide evidence demonstrating the Beneficiary has 24 months of full-time qualifying experience in the job offered. SCOPS advised that such evidence should include experience letter(s) from current or former employers that comply with the requirements at 8 C.F.R. § 204.5(l)(3)(ii)(A). Due to the inconsistencies noted above, SCOPS also requested "independent objective evidence to enhance the credibility of the beneficiary's work experience" noting such evidence may include, but is not limited to, pay statements, tax records or other employment records.

The Petitioner's RFE response included a notarized letter from the Beneficiary, who stated that he did not willfully misstate his employment history when applying for a student visa from DOS. He explained that he does not specifically recall completing the visa applications, and that due to a lack of English language proficiency, he "may have mistakenly believed the question to be regarding whether I had worked in the US or intended to work in the US to which the answer would have been 'no.'" The Beneficiary asserted that he had in fact "worked abroad" as reflected in the record.

The Petitioner also submitted a new experience letter from the owner of [redacted] dated August 2024. He stated that the Beneficiary "worked in our Restaurant in [redacted] from the period of May 2012 to July 2014 and worked over his school breaks between 2015 and 2019 full time (summer/Winter)." The letter provides specific dates for eight periods of intermittent employment between 2015 and 2019, with the last period occurring between December 17, 2019, and January 3, 2020.

Finally, the Petitioner provided an "Employment Verification" letter attributed to an accountant for [redacted] The letter states the Beneficiary was employed by the restaurant and received a monthly salary of 8,000 Saudi Riyals (SAR), which was disbursed to him in cash. The accountant included a brief explanation of "income payment practices" in Saudi Arabia, noting that small

businesses customarily compensate their employees in cash due to "the absence of a personal income tax system," and the fact that there "are no income tax records or withholding documentation typically maintained for employees."

The Petitioner's response to the RFE did not directly address the inconsistency between Section K of the labor certification, where the Beneficiary indicated that he did not work for [redacted] after July 1, 2014, and the experience letters, which state that he worked for this business intermittently between 2015 and 2019, in addition to working there continuously between May 2012 and July 2014.

SCOPS acknowledged the updated experience letter but emphasized that it did not sufficiently distinguish between the Beneficiary's claimed part-time and full-time employment. SCOPS further noted that the Petitioner did not provide, as requested, additional objective evidence of the Beneficiary's employment such as pay stubs or earnings statements. As such, the decision notes that "USCIS is bound by the information provided by the labor certification, indicating the [B]eneficiary was employed fourteen (14) hours a week at [redacted]."

SCOPS stated that based on periods of employment detailed in the employer's August 2024 letter, the Beneficiary accrued 1,055 days of part-time employment. SCOPS observed that 24 months of full-time experience is the equivalent of 730 days of full-time experience or 1,460 days of part-time experience and emphasized that the record did not demonstrate that the Beneficiary had accrued the required experience with [redacted]. Accordingly, SCOPS denied the petition.

On appeal, the Petitioner concedes that the previously submitted employment letters from [redacted] did not sufficiently distinguish between the Beneficiary's full- and part-time employment. The Petitioner also acknowledges the inconsistency between the information conveyed in those letters and the information provided at Section K of the labor certification, where the Beneficiary stated that he worked for the restaurant solely on a part-time basis and only for the period from May 20, 2012, through July 1, 2014.

The Petitioner attributes these deficiencies and omissions to former counsel, claiming that she provided ineffective assistance in this matter. The Petitioner provides evidence that it filed a formal complaint against former counsel with the Florida Bar Association. It also submits a document detailing the Beneficiary's employment history and a more detailed experience letter from [redacted]. The Petitioner asserts that, with this evidence, it has established that the Beneficiary has the required 24 months of full-time, qualifying employment.

For the reasons discussed below, the Petitioner has not met its burden to demonstrate that the Beneficiary accrued the equivalent of 24 months of full-time experience with [redacted].

As noted, the Petitioner attributes the omission of the Beneficiary's claimed qualifying work experience from the labor certification to former counsel. In support of this claim, it submits a copy of a self-prepared employment history that the Beneficiary purportedly provided to former counsel for use in preparing the "Alien Work Experience" portion of the labor certification filed in August 2022.

However, the newly submitted employment history does not indicate that the Beneficiary had 24 months of full-time employment with [redacted]. According to this document, the

Beneficiary had one period of employment with [redacted] with a start date of May 20, 2012, and an end date of July 1, 2014. It states the number of hours he worked per week during this period was "14 hrs 35 hrs during summer break." Therefore, at most, he stated he worked a combination of full-time hours and part-time hours over this approximately 25-month period; he did not indicate that he also worked for this company intermittently between 2015 and 2019.

In addition, it is evident that the Beneficiary's employment history was prepared no earlier than 2023.[2] Therefore, the Petitioner's claim that he provided this document to former counsel when she was preparing the labor certification, which was filed with DOL in August 2022, is not credible. But even if former counsel had completed Section K of the labor certification to reflect the information the Beneficiary purportedly provided to her in this employment history, the labor certification would not have indicated that he had accrued 24 months of full-time employment with [redacted]

In addition, the record reflects that the Beneficiary signed Section L of the labor certification, where he declared "under penalty of perjury that Sections J and K are true and correct." The Petitioner claims that neither its owner nor the Beneficiary were aware of the allegedly incomplete information provided at Section K of the labor certification until after the DOL certified it. The Petitioner contends that former counsel advised them to sign the labor certification's employer and alien declarations even after they informed her that Section K did not fully and accurately account for the Beneficiary's work experience gained with [redacted]

Regardless of the claimed reasons for any omitted work experience, the Petitioner concedes that the labor certification indicates on its face that the Beneficiary does not meet the minimum 24-month experience requirement for the offered job or for the requested skilled worker classification. The Petitioner requests that we consider the information contained in the latest experience letter from [redacted] submitted in support of the appeal.

USCIS may consider evidence of a beneficiary's work experience where such experience is not stated on the labor certification application. Generally, however, evidence of purported qualifying experience omitted from the labor certification is less credible. *See Matter of Leung*, 16 I&N Dec. 12, 14 (Distr. Dir. 1976), *disapproved of on other grounds by Matter of Lam*, 16 I&N Dec. 432, 434 (BIA 1978) (disbelieving an adjustment applicant's claim of qualifying experience at a business he omitted as a former employer on his labor certification application). In such instances, employment letters alone are not sufficient to corroborate a beneficiary's qualifying work experience.

Here, the information provided on the labor certification application casts doubt on the Beneficiary's claimed work experience gained after July 1, 2014. The Petitioner's assertion that former counsel was negligent in the preparation of that application is noted, but is not fully supported by the record, as the evidence submitted on appeal suggests that the Beneficiary did not inform former counsel of his claimed intermittent employment with [redacted] between 2015 and 2019 until after she filed the labor certification with DOL.

[2] The employment history includes information regarding the Beneficiary's employment as a graduate assistant at a U.S. university with a starting date of January 11, 2023.

Further, as noted by SCOPS in the RFE, there are additional inconsistencies relating to the Beneficiary's employment history. The Beneficiary declared under penalty of perjury on two separate nonimmigrant visa applications, submitted to DOS in April 2014 and June 2019 respectively, that he was not currently employed and had never been employed. While the Beneficiary provided a statement indicating he does not recall completing the visa applications and must have misunderstood the questions regarding current and prior employment, his statement alone is similarly insufficient to resolve this inconsistency.

Rather, the Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). SCOPS, after informing the Petitioner of inconsistencies in the record, had specifically advised that it should provide "independent objective evidence to enhance the credibility of the beneficiary's work experience," such as the Beneficiary's tax records, employment records, pay statements, or other evidence.

The evidence on appeal includes a more detailed letter from [redacted] purporting to verify the Beneficiary's periods of full- and part-time employment with this business between 2012 and 2020. The Petitioner maintains that this new evidence is sufficient to demonstrate the Beneficiary accrued "total experience that equals 733 days, which is above the 730-day threshold for 24 months of full-time employment." However, this new letter, like the experience letter submitted in response to the RFE, is not supported by corroborating evidence.

As mentioned, the record contains a letter purportedly from an accountant for [redacted] which states that the Beneficiary was paid in cash and that, due to the absence of personal income tax obligations in Saudi Arabia, there are no tax or withholding documents the company is required to maintain. This explanation, however, does not account for the absence of *any* independent, objective evidence, from either the Beneficiary or the employer, to corroborate the Beneficiary's claimed intermittent employment with this business between 2012 and 2020. In the new experience letter provided on appeal, the business owner provides the precise dates for 13 claimed intermittent periods of full and part-time employment over a period of nine years, despite the accountant's statement that no records of the Beneficiary's employment are available. It is unclear how the owner could do so with such specificity if the company did not maintain any personnel, financial, or other records relating to the Beneficiary's employment.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

While we have considered the new evidence provided on appeal in light of the Petitioner's claim that it received ineffective assistance from prior counsel, the new employment verification letter from the Beneficiary's alleged prior employer, by itself, does not have sufficient probative value to overcome

the inconsistencies in the record and to overcome SCOPS' grounds for denial. For all the foregoing reasons, the Petitioner has not met its burden to establish, by a preponderance of the evidence, the Beneficiary's qualifying experience for the offered job. Accordingly, the appeal will be dismissed.

Finally, while not a separate ground for denial, we note the record indicates that the Petitioner did not disclose a familial relationship between the Beneficiary.

Section C.9 of the labor certification asked the Petitioner: "[I]s there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien?" The attorney who prepared the labor certification checked the box marked "No." By signing the employer declaration at Part N, the company's authorized signatory took full responsibility for the accuracy of any representations made by the attorney. She also declared under penalty of perjury that she reviewed the application and the information contained therein was true and accurate to the best of her knowledge.

In the RFE issued on July 10, 2024, SCOPS discussed a Form DS-160 (Online Nonimmigrant Visa Application) the Beneficiary submitted to DOS on April 6, 2014. On this visa application, where asked to provide the name of a contact in the United States, the Beneficiary identified his U.S. contact as [redacted] and stated that she is his relative. Ms. [redacted] is identified in the record as the Petitioner's owner and the company's tax returns submitted in support of the petition indicate she is married to [redacted] As such, it appears that [redacted] and [redacted] are the same person, and that the Petitioner's owner is the Beneficiary's relative.

Based on this information, we conclude that the labor certification misrepresents the family relationship between the Petitioner's owner and the Beneficiary, and that the facts stated on the petition are not true. *See* section 204(b) of the Act.[3] While we are not dismissing the appeal on this basis, the Petitioner will need to address this issue in any future proceeding.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary met the minimum stated experience requirement for the offered position as of the priority date. Accordingly, the appeal will be dismissed, and the petition will remain denied.

ORDER: The appeal is dismissed.

[3] As indicated above, DOL must certify that "there are no sufficient workers who are able, willing, qualified . . . and available" for an offered position. Section 212(a)(5)(A)(i)(I) of the Act. A family relationship between an employer's owner and a sponsored alien creates a presumption that that an offered position is not clearly available to U.S. workers. *See* 20 C.F.R. § 656.17(1) (requiring a labor certification employer to demonstrate the bona fides of a job opportunity if a family relationship exists between an employer's principal and the alien).