U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41051079

Date: JUNE 16, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of credit risk management services, seeks to employ the Beneficiary as a search marketing strategist. The company requests his 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). Businesses may sponsor aliens for U.S. permanent resident status in this category to work in jobs requiring at least bachelor's degrees. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's possession of all the skills required for the offered job. On appeal, the Petitioner contends that SCOPS improperly disregarded language on the accompanying certification from the U.S. Department of Labor (DOL) stating the company's later revision of the job's required skills.

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 additional evidence is needed to confirm the company's claims that it did not require applicants to have the originally listed skills and that the Beneficiary's degree is in an acceptable field of study. We will therefore withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must obtain certification from DOL that: there are insufficient U.S. workers able, willing, qualified, and available for the offered job; and an alien's employment in the job would 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, a prospective employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the

Act, 8 U.S.C. § 1154(a)(1)(F); 8 C.F.R. § 204.5(a). Among other things, USCIS determines whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. *See* 8 C.F.R. § 204.5(l)(3)(i), (ii)(C).

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

A. The Required Skills

A petitioner must demonstrate that a beneficiary met all DOL-certified requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is November 9, 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).

When assessing a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the offered job's minimum requirements. USCIS may neither ignore certification terms nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *contents* of the labor certification") (emphasis in original).

The Petitioner's labor certification does not directly state the requirements of the offered search marketing strategist job. Rather, the labor certification refers to the job requirements listed on the company's prior application for prevailing wage determination (PWD).[1]

The PWD states the offered job's minimum requirements as a bachelor's degree in information technology, digital marketing, market research, or related fields. The PWD indicates that the job requires neither training nor experience. But, under "Special Skills and Other Requirements," the PWD states the following requirements:

- Experience in tracking, measuring and reporting search marketing performance, keyword research, and familiar with the use of SEM services such as SEMrush, or Google Analytics;
- Experience producing qualitative and quantitate research plans, data analysis, and digital prototyping for web and mobile;
- Experience in translating research into actionable insights with implications for improving customer acquisition; and

[1] The Petitioner filed its labor certification application after June 1, 2023. *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual ("Effective June 1, 2023, DOL required petitioners to electronically file permanent labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089[, Application for Permanent Employment Certification].") Thus, the Petitioner's labor certification incorporates the requirements for the offered job as listed on the company's prior PWD. *See* 20 C.F.R. § 656.40(a); *see generally* 6 *USCIS Policy Manual* E.6(A)(2) ("DOL no longer uses Form ETA-9089 to collect information about the minimum requirements of the job opportunity. Instead, employers now provide that information on the Application for Prevailing Wage Determination (Form ETA-9141).")

- Proficient in running software for user research data analysis (surveymonkey, excel, google forms).

The Petitioner submitted copies of the Beneficiary's U.S. master of arts degree in design management, his transcript, and a description of the courses he completed. SCOPS, however, found insufficient evidence that the Beneficiary acquired all of the special skills listed on the PWD and issued a request for additional evidence (RFE).

In its RFE response, the Petitioner noted that section E.5 of the labor certification, "Additional conditions about the offered wage," states the company's revision of the special skills listed on the PWD. The section indicates that the company's advertisements and recruitment material for the offered job during the labor certification process instead required only three of the four special skills listed on the PWD: "Producing qualitative and quantitate research plans, data analysis, and digital prototyping for web and mobile; Translating research into actionable insights with implications for improving customer acquisition; Running software for user research data analysis (surveymonkey, excel, google forms)."

The Petitioner submitted copies of recruitment materials for the offered job showing advertisement of the revised special skills to U.S. workers. The company also provided a letter from a professor at the school that issued the Beneficiary's master's degree, stating that he gained knowledge and experience with the revised special skills.

SCOPS concluded that the Petitioner did not demonstrate the Beneficiary's "[e]xperience in tracking, measuring and reporting search marketing performance, keyword research, and familiar with the use of SEM services such as SEMrush, or Google Analytics," as listed on the PWD. On appeal, the company argues that "the Service errs in limiting the minimum requirement assessment to [the PWD], rather than applying requirements listed in the final labor certification, ETA Form 9089 upon which the I-140 petition is based."

The Petitioner submitted evidence indicating that the company's ads for the offered job omitted one of the originally listed special skills. But the Petitioner should provide copies of any recruitment materials for the offered job not already provided, including its recruitment report. *See* 20 C.F.R. § 656.17(g)(1) (stating that a recruitment report must describe the recruitment steps undertaken and the results achieved). We will therefore remand the matter.

B. The Field of Study

Although unaddressed by SCOPS, the Petitioner has not demonstrated that the Beneficiary's degree lies in an acceptable field of study.

As previously indicated, the PWD states that the offered job requires a bachelor's degree in "[i]nformation technology, digital marketing, market research, or related fields." The Petitioner submitted copies of the Beneficiary's U.S. master of arts degree in design management, a transcript of those graduate studies, and a description of the graduate courses he completed. On the labor certification, the Beneficiary did not describe his undergraduate studies, nor does the record include documentation regarding those studies.

The Petitioner has not demonstrated that design management, the field of the Beneficiary's degree, relates to the designated fields of information technology, digital marketing, or market research. The letter from a professor at the school that issued the Beneficiary's degree does not discuss the purported relationship between design management and the fields designated on the PWD.

SCOPS did not notify the Petitioner of this evidentiary deficiency. On remand, SCOPS should ask the Petitioner to address how the Beneficiary's degree in design management relates to the allowed fields of information technology, digital marketing, or marketing research.

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