U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38604219

Date: JUNE 24, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of financial information services, seeks to employ the Beneficiary as a "principal software developer." The company requests 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 U.S.C. § 1153(b)(2)(A). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least bachelor's degrees followed by five years' progressive experience in applicable specialties. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's qualifying experience with the offered job's required programming languages. On appeal, the company contends that SCOPS imposed requirements beyond those listed on the accompanying certification from the U.S. Department of Labor (DOL).

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 SCOPS misinterpreted the plain language of the programming language sub-requirement on the labor certification. We will therefore sustain the appeal.

I. LAW

Immigration for an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain DOL certification that: there are insufficient U.S. workers able, willing, qualified, and available for an 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, an 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). 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

A petitioner must demonstrate that a beneficiary met all DOL-certified job requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. at 160. This petition's priority date is January 20, 2023, the date DOL accepted the petition's application for alien labor certification 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 job's minimum requirements. The Agency may neither ignore certification terms nor impose unstated requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the primary requirements of the offered job of principal software developer as a U.S. master's degree or a foreign equivalent degree in computer science, engineering, or a related field, plus one year's experience in the job offered or in software development. The labor certification also states the company's acceptance of an alternate combination of education and experience: a bachelor's degree followed by five years' experience. Further, part H.14 of the certification, "Special skills or other requirements," states: "Must have one (1) year of experience in each of the following: Linux or Unix; C, C++, C#, Java, Javascript, Python, or another high-level programming language; SQL or NoSQL; and Data structures, algorithms, and object-oriented design concepts."

On the labor certification, the Beneficiary attested that, by the petition's priority date, a U.S. university awarded her a master's degree in electrical engineering. The Petitioner documented her educational qualifications for the offered job, and they are not at issue. She also stated – and the Petitioner documented – that she gained one year of full-time, qualifying experience with the company in the United States as a senior software engineer, from January 2022 until the petition's January 2023 priority date.

Generally, a labor certification employer cannot rely on experience that an alien gained with it. "The employer cannot require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire." 20 C.F.R. § 656.17(i)(3). But the regulation allows such experience if the alien gained it while working in a job "not substantially comparable to the position for which certification is being sought." *Id.* For this purpose, a "substantially comparable" job means "a job or position requiring performance of the same job duties more than 50 percent of the time." 20 C.F.R. § 656.17(i)(5).

The Petitioner submitted evidence that, in her current job, the Beneficiary spends less than half her time on the same duties of the offered job. Her current and offered jobs are therefore substantially different, and the company may rely on the experience that she gained with it.

SCOPS, however, found insufficient evidence that the Beneficiary gained the requisite one year's experience in the programming languages listed in part H.14 of the labor certification. The Petitioner submitted a letter from a human resources representative that, at the time of the petition's priority date, the Beneficiary had one year's experience in the Java and Python languages. SCOPS, however, noted that the letter does not indicate the Beneficiary's experience with C, C++, C#, or Javascript, the other languages listed in part H.14. SCOPS concluded that part H.14's use of the word "each" required the Beneficiary to have experience with all the listed programming languages.

As the Petitioner argues, however, SCOPS misinterpreted the programming language sub-requirement in part H.14 of the labor certification. As previously indicated, part H.14 states: "Must have one (1) year of experience in each of the following: Linux or Unix; C, C++, C#, Java, Javascript, Python, or another high-level programming language; SQL or NoSQL; and Data structures, algorithms, and object-oriented design concepts." The use of a colon and semi-colons indicates that the word "each" refers to the following four sub-requirements:

- "Linux or Unix;"
- "C, C++, C#, Java, Javascript, Python, or another high-level programming language;"
- "SQL or NoSQL;" and
- "Data structures, algorithms, and object-oriented design concepts."

By using the conjunctive "and," the fourth sub-requirement mandates that the Beneficiary have at least one year's experience with all the listed skills in that sub-requirement, "Data structures, algorithms, *and* object-oriented design concepts." (emphasis added). *See United States v. Palomar-Santiago*, 593 U.S. 321, 326 (2021) ("The requirements are connected by the conjunctive 'and,' meaning defendants must meet all three.") In contrast, the programming language sub-requirement mandates at least one year's experience with "C, C++, C#, Java, Javascript, Python, *or* another high-level programming language." (emphasis added). The use of the disjunctive "or" indicates that the Beneficiary need only have one year's experience in one – not all – of the listed languages. *See Horne v. Flores*, 557 U.S. 433, 454 (2009) ("Use of the disjunctive 'or' makes it clear that each of the provision's three grounds for relief is independently sufficient.") Because the Petitioner documented that she had one year's experience with two of the listed languages (Java and Python), she more than met the programming language sub-requirement. SCOPS' interpretation of the sub-requirement disregards the use of the disjunctive "or." *See Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (citation omitted) ("[C]ourts 'must give effect, if possible, to every clause and word of a statute.'") SCOPS therefore misinterpreted part H.14's plain language. *See Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) ("The Court – like the [immigration service] – must examine the certified job offer exactly as it is completed by the prospective employer.")

The Petitioner demonstrated that the Beneficiary met the offered job's programming language sub-requirement, as well as the other sub-requirements of H.14, and, therefore, met the experience requirements stated on the labor certification. We will therefore withdraw SCOPS' contrary finding.

ORDER: The appeal is sustained.