U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41307879

Date: MAR. 10, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a dairy manufacturer, seeks classification for the Beneficiary as an individual of exceptional ability in the sciences for employment as a senior scientist. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This second preference classification makes immigrant visas available to aliens with a degree of expertise significantly above that normally encountered in the sciences, arts, or business. *Id.* The Petitioner also seeks designation under 20 C.F.R. § 656.5, Schedule A, Group II.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Beneficiary satisfied at least two of the seven evidentiary criteria at 20 C.F.R. § 656.15(d)(1)(i)-(vii). SCOPS also concluded that the Petitioner did not establish that the Beneficiary's work in the past year or intended work in the United States requires a person of exceptional ability. 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

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act.

Every petition under this classification must include one of the following three documents: (1) an individual labor certification (Form ETA-9089) from the U.S. Department of Labor (DOL), (2) an application for Schedule A designation, or (3) documentation to establish that the beneficiary qualifies

for one of the shortage occupations in the DOL's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).[1]

DOL has already determined that the United States lacks sufficient workers for certain occupations, as well as other jobs requiring exceptional ability. 20 C.F.R. § 656.5. DOL has pre-determined that the employment of foreign workers in these Schedule A jobs would not harm the wages or working conditions of U.S. employees in similar positions. *Id.* As prospective employers of Schedule A workers need not advertise their offered jobs to U.S. workers, DOL authorizes USCIS to adjudicate Schedule A applications in petition proceedings. 20 C.F.R. § 656.15(a). Thus, here, USCIS rules not only on the petition but also on its accompanying Schedule A application. *See* 20 C.F.R. § 656.15(e) (describing USCIS Schedule A determinations as "conclusive and final").

Schedule A, Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in his or her field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of seven criteria (for example awards, memberships, published material, and contributions). *Id.* at (i)-(vii). Beyond demonstrating widespread acclaim and international recognition, the documentation presented must show that the position the beneficiary has worked in the year prior to filing, and the one sought, both require an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The Petitioner indicated on Form ETA-9089, Application for Permanent Employment Certification, that it seeks to employ the Beneficiary as a senior scientist. The Form ETA-9089 states that the minimum requirements for the offered position are a master's degree or higher in food or dairy science or related.[2] The position does not require any employment experience, has no training requirements, and does not require any special skills.

The record demonstrates that the Petitioner earned two master's degrees from [redacted] in food science and technology. In her second graduate degree, she concentrated in dairy science, with a minor in marketing and food distribution. She has been a research scientist with the Petitioner since 2019, working on "raw milk ingredient research, milk fractionation, consumer trend analysis, regulatory compliance, global research partnerships, and dairy-based product innovation." She has been employed in the offered position of senior scientist since January 2022.

[1] USCIS also has discretion to excuse job-offer and labor certification requirements if an EB-2 petitioner demonstrates that waiver of these U.S.-worker protections would be "in the national interest." Section 203(b)(2)(B)(i) of the Act. This petition, however, does not request a national interest waiver.

[2] The company's labor certification incorporates the offered job's requirements as listed on the prior application for a prevailing wage determination (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).")

SCOPS determined that the Beneficiary qualified as a member of the professions holding an advanced degree but denied the petition because the Petitioner did not establish that the Beneficiary met at least two of the seven listed criteria under the Schedule A, Group II regulations. Specifically, SCOPS concluded that the Beneficiary satisfied only one criterion, authorship of scholarly articles under 20 C.F.R. § 656.15(d)(1)(vi). Additionally, SCOPS stated, "since the position merely requires a Master's Degree in Food or Dairy Science, the evidence does not establish that the beneficiary's work in the past year or intended work in the United States requires a person of exceptional ability."

A. The Criteria at 20 C.F.R. § 656.15(d)(1)(i)-(vii)

The record supports SCOPS' finding that the Petitioner met one of the seven criteria by submitting evidence of the Beneficiary's authorship of scholarly articles in the field in international journals. *See* 20 C.F.R. § 656.15(d)(1)(iv). On appeal, the Petitioner asserts that it satisfied an additional three evidentiary requirements by documenting the Beneficiary's receipt of internationally recognized awards for excellence in her field, her membership in international associations in the field requiring outstanding achievement, and her original scholarly research contributions of major significance in the field. *See* 20 C.F.R. § 656.15(d)(1)(i), (ii), and (v).

In support of the evidentiary requirement at 20 C.F.R. § 656.15(d)(1)(v), the Petitioner submitted copies of the Beneficiary's research articles published in international professional journals, along with her Google Scholar profile listing her publications with citation data. The Petitioner also submitted support letters discussing the significance of her contributions to the field of dairy science, and a patent application filed by the Petitioner and listing the Beneficiary as one of four inventors of a [redacted]

In analyzing the evidence submitted in support of 20 C.F.R. § 656.15(d)(1)(v), SCOPS acknowledged the letters of support and the Beneficiary's patent and citation history. However, without analysis, SCOPS declined to consider the letters of support, stating that "the submission of solicited letters supporting the petition is not presumptive evidence of eligibility." SCOPS also determined that the Beneficiary's citation history did not reflect the major significance of her research "when compared with that of many scientists in the field, whose publications (according to Google Scholar) have garnered citations numbered in the hundreds to thousands."

On appeal, the Petitioner points to the letters of support that address the Beneficiary's scholarly research contributions of major significance in the field. The letters from the Petitioner's current and former research executives provide specific details about the Beneficiary's contributions. These include her research on converting underutilized dairy streams into valuable prebiotic ingredients, on preserving the functionality of milk bioactives, on enzymatic spoilage control and protective cultures, and on optimizing moisture content and refining the integration in butter. Additional letters from research professors in the field discuss the Beneficiary's contributions, including a natural approach to reduce dairy food spoilage and enhance sustainability, and research on potential food safety hazards and outbreaks impacting dairy.

The Beneficiary's Google Scholar profile reflects that she authored numerous articles directly related to her field. Two articles were published by [redacted] during the Beneficiary's graduate studies. Five articles were published in the [redacted] Of the five, three articles have

been cited multiple times. On appeal, the Petitioner states that SCOPS erred in considering only the "raw number of citations [the Beneficiary's] studies received." The Petitioner notes that, considering "the average citations for an article in the world's leading general dairy research journal," the Beneficiary's studies have been cited two and three and times higher.

SCOPS compared the Beneficiary's number of citations to "many scientists in the field" with more citations. However, the record does not identify those scientists or their field, or the actual citation history of any scientist compared with the Beneficiary. Given the large variance in citation rates between scientific fields as just one of many factors that may influence citations, comparisons to the number of citations to unidentified "scientists in the field" is not meaningful or probative.

Although we agree with SCOPS' statement that "a beneficiary's original contributions in the field must be demonstrated by preexisting, independent, and corroborating evidence," SCOPS erred in declining to consider the citation history and letters of support as independent evidence of the Beneficiary's scholarly research of major significance in the field. The Beneficiary's citation history indicates that her articles received multiple citations in separate articles. This evidence, when viewed with other evidence in the record, supports the Petitioner's claim that the Beneficiary's research has been recognized and applied in the field of dairy science. The support letters are from experts in the field who have first-hand knowledge of the Beneficiary's contributions. The record also includes corroborating evidence of these contributions in the form of awards presented to the Beneficiary for her research, copies of her research and citation history, and the Petitioner's patent application based on the Beneficiary's research.

Upon review of the totality of the evidence in the record, we conclude that the Petitioner has established that the Beneficiary meets the evidentiary criteria at 20 C.F.R. § 656.15(d)(1)(v).

Because the Petitioner meets the minimum amount of evidentiary criteria, we need not determine whether it satisfied others. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions). We therefore decline to address the additional evidentiary criteria that the Petitioner claims to have satisfied.

B. Whether the Position Requires Exceptional Ability

As noted above, the labor certification states that the position of senior scientist requires a master's degree and no experience, no training, and no special skills. The record also includes a "Notice of Job Opportunity" that states that the offered position requires "MS or higher in Food or Dairy Science or related" with no experience, no training, and no special skills listed.

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the job offer exactly as completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the labor certification form.[3] *Id.* at 834.

Although the Petitioner had the opportunity to list experience, training requirements, and special skills on the prevailing wage determination (PWD) underlying the labor certification, it did not. However, in a letter of support submitted with the initial filing, the Petitioner stated, "The position requires, at a minimum, a master's degree in food or dairy science or a closely related field, *as well as substantial experience* in milk product research, dairy fermentation, and food enzyme applications." (Emphasis added). In any further filings, the Petitioner must explain the inconsistency between its statements and the minimum requirements listed on the PWD, labor certification, and its notice of filing.

The Petitioner and the DOL classified the offered position of senior scientist as a "food scientist and technologist" based on the O*Net job description below:

> Use chemistry, microbiology, engineering, and other sciences to study the principles underlying the processing and deterioration of foods; analyze food content to determine levels of vitamins, fat, sugar, and protein; discover new food sources; research ways to make processed foods safe, palatable, and healthful; and apply food science knowledge to determine best ways to process, package, preserve, store and distribute food.

O*NET OnLine, Food Scientists and Technologists Summary Report, https://www.onetonline.org/link/summary/19-1012.00 (visited Mar. 10, 2026).

In its response to SCOPS' RFE, the Petitioner asserted that the position of senior scientist requires someone of exceptional ability to investigate new technologies and develop methods for dairy preservation. On appeal, the Petitioner references its support letter and the job duties of a senior scientist. It states that "the Senior Scientist position is central to [the Petitioner's] intellectual property portfolio, including the creation of patentable processes and formulations." However, as noted in the O*NET summary report, the duties of researching new technologies and developing new scientific methods are central to the job duties of all food scientists.

Neither the Petitioner's statements nor the minimum requirements listed on the PWD and labor certification are indicative of requirements that would require someone of exceptional ability.

For the above reasons, we conclude that there is insufficient evidence in the record to support the Petitioner's statement that the position requires an individual of exceptional ability. As the Beneficiary has held the offered position since 2022, the Petitioner has also not established that the Beneficiary's position in the year prior to filing requires an individual of exceptional ability.

[3] As noted above, the education, training, experience, and other requirements for the proffered position are set forth at Part F of the DOL Form ETA-9141, Application for Prevailing Wage Determination, which is incorporated into the labor certification.

III. CONCLUSION

Upon review of the entire record, including evidence submitted on appeal, we conclude that the Petitioner has established that the Beneficiary meets the minimum requirements for the offered position and for classification as a member of the professions with an advanced degree. We further conclude that the Petitioner submitted evidence that the Beneficiary has been accorded widespread acclaim and international recognition and meets at least two of seven criteria set forth at 20 C.F.R. § 656.15(d)(1)(i)-(vii). However, we conclude that the record does not demonstrate that the Beneficiary's position in the year prior to filing and the one sought both require an individual of exceptional ability. *Id.* Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.