U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 40812707

Date: MAR. 11, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks to employ the Beneficiary as a QA automation tester under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum requirements of the offered position or for the requested advanced degree classification. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (Form ETA-9089) from the U.S. Department of Labor (DOL). *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 worker 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 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 alien 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

Pursuant to 8 C.F.R. § 204.5(k)(2), the term "advanced degree" means, "any United States professional or academic 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 progressively responsible experience in the specialty shall be considered the equivalent of a master's degree."

The petition is accompanied by a labor certification with a priority date of July 18, 2023.[1] In this case, the labor certification[2] states the following with respect to the requirements for the proffered position of QA automation tester:

> Masters in Computer Science/Computer Applications/Engineering (Technology in I.T./Electrical & Electronics). Will accept Bachelor of Science in Computer Science/Computer Applications/Engineering (Technology in I.T./Electrical & Electronics) followed by 5 years of progressive experience in field or related field in lieu of Masters. Will Accept combination of education and experience. Foreign Educational Equivalent accepted.

Appendix A of the labor certification states that the Beneficiary possesses a bachelor of technology in information technology from [redacted] in India, awarded in 2011. The record contains a copy of the Beneficiary's degree and transcript from [redacted] The record also includes an evaluation of the Beneficiary's academic credentials, stating that his bachelor of technology degree is equivalent to a bachelor of science in information technology from an accredited institution of higher education in the United States.

Appendix A of the labor certification also states that the Beneficiary possessed more than 10 years of experience as a test and project engineer as of the priority date. The record contains letters and certificates from the Beneficiary's former employers, as well as affidavits from his former coworkers attesting to his employment experience, salary, and possession of the languages, skills and tools required for the offered position.

After reviewing the initial evidence, as well as evidence submitted in response to a request for evidence, SCOPS determined that, although the record documented the Beneficiary's possession of a bachelor's degree equivalent and more than five years of experience in the field, "the letters do not show that he has progressive experience as required to meet the classification of holding an advanced degree." SCOPS concluded that the Petitioner had not established that the Beneficiary met the minimum requirements for the position or for the requested classification.

On appeal, the Petitioner submits a statement from the Beneficiary attesting to project details and his job responsibilities from 2011 to the present. The Petitioner also submits an expert opinion evaluating

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

[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).")

the Beneficiary's academic credentials and employment experience. The Petitioner asserts on appeal that it has submitted documentation clearly establishing that the Beneficiary has attained progressive experience and qualifies as a member of the professions with an advanced degree, as well as for the offered position of QA automation tester.

The record demonstrates that the Beneficiary began his employment following completion of his bachelor's degree in 2011 as a "systems engineer-trainee." Service certificates, hiring letters, and affidavits from coworkers demonstrate that the Beneficiary's career progression included increasing levels of responsibility, as well as corresponding increases in salary. His designations following trainee in 2011 included test engineer, software test engineer, senior test engineer, associate-projects, and senior project engineer (his last designation prior to employment with the Petitioner in 2022).

Upon review of the entire record, including evidence submitted on appeal, we conclude that the Petitioner has established that the Beneficiary meets the requirements for the offered position and for classification as a member of the professions with an advanced degree. Accordingly, SCOPS' decision is withdrawn.

However, while we have determined that the Beneficiary possesses the required education and experience for the offered position, we are unable to conclude that the labor certification supports the requested advanced degree professional classification under section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k)(4)(i).

Although not raised by SCOPS, the minimum requirements of the offered position, as stated on the labor certification, appear to allow for less than an advanced degree. Here, the Petitioner stated in the minimum requirements, "Will Accept combination of education and experience." We note that, in Part G.4b of the Form ETA-9089, the Petitioner already indicated its willingness to accept any suitable combination of education, experience, or training.[3] Therefore, the addition of the language "will accept a combination of education and experience" in the minimum requirements appears to indicate that the Petitioner was willing to accept something less than a completed master's degree or a bachelor's degree followed by five years of progressive experience. And, if so, the labor certification may not support the requested classification.

When determining the minimum requirements for the offered position, we must examine "the language of the labor certification job requirements." *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS interprets the meaning of terms used to describe the requirements of the

[3] The regulation at 20 C.F.R. § 656.17(h)(4)(ii) states:

> If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

This regulation was intended to incorporate the Board of Alien Labor Certification Appeals (BALCA) ruling in *Francis Kellogg*, 1994-INA-465 and 544, 1995-INA 68 (Feb. 2, 1998) (*en banc*). The statement on the labor certification that an employer will accept applicants with "any suitable combination of education, training or experience" is commonly referred to as "*Kellogg* language." This statement is now incorporated into the labor certification at Part G.4b.

offered position by examining the labor certification "exactly as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying the plain language" of the labor certification even if the employer may have intended different requirements than those stated on the form. *Id.* at 834.[4] USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d 1008 at 1012-1013; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981); *Matter of Symbioun Techs., Inc.,* 2010-PER-10422 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the labor certification clarified an employer's minimum job requirements).

Because the record does not establish the intended meaning of the Petitioner's requirements, we will remand this matter for further fact-finding. On remand, SCOPS may wish to request additional evidence of the intended meaning and actual minimum requirements for the offered position and afford the Petitioner a reasonable opportunity to respond. SCOPS may wish to specifically request copies of documentation created during the labor certification process, including: the notice of filing; the job order filed with a state workforce agency; the prevailing wage determination; advertisements of the offered position in newspapers, online, and in the Petitioner's employee referral program; the recruitment report; any resumes or applications received in response to the recruitment efforts; and any correspondence with the DOL. The decision should consider whether the educational requirements in the recruitment allowed for less than a master's degree or a less than a full bachelor's degree and five years of progressive experience to determine whether the labor certification supports the requested category.

## III. CONCLUSION

The Petitioner has established that the Beneficiary meets the requirements for the offered position. However, because there is an issue of interpretation in the actual minimum requirements, we will remand the matter for further consideration.

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

[4] 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.