U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41858451

Date: MAR. 13, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a trucking company, seeks to employ the Beneficiary as a marketing associate. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "skilled worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least two years of training or employment experience. *Id.*

Service Center Operations (SCOPS) denied the petition. SCOPS concluded that the Petitioner did not establish its required intent to employ the Beneficiary in the geographical area listed on the accompanying certification from the U.S. Department of Labor (DOL). On appeal, the Petitioner submits additional evidence purportedly showing the company's continuous maintenance of a worksite in that area since the petition's priority date.

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 decline to accept the company's evidence on appeal and affirm the petition's denial. We will therefore dismiss the appeal.

I. LAW

Immigration as a skilled worker 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 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)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

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). 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)(ii)(B).

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

An employer may file an immigrant visa petition if the business is "desiring and intending to employ [an alien] within the United States." Section 204(a)(1)(F) of the Act. A petitioner must intend to employ a beneficiary under the terms and conditions of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966).

A labor certification remains valid "only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment" stated on it. 20 C.F.R. § 656.30(c)(2). The "area of intended employment" means the "the area within normal commuting distance of the place (address) of intended employment" and includes anywhere within the same Metropolitan Statistical Area (MSA). 20 C.F.R. § 656.3.[1] The immigration service may deny a petition where a petitioner did not intend to employ a beneficiary within the area of intended employment listed on a labor certification. *See Matter of Sunoco Energy Dev. Co.*, 17 I&N Dec. 283, 284 (Reg'l Comm'r 1979).

Before approving a visa petition, USCIS must ensure that the facts stated in it, including on the accompanying labor certification, are true. *See* Sections §§ 203(b)(3)(C), 204(b) of the Act; 8 C.F.R. §§ 204.5(a)(2), (k)(4)(i), (l)(3)(i).

The Petitioner filed its labor certification application on June 19, 2023, the petition's "priority date." *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date). A petitioner must show that a petition and beneficiary met all petition and job requirements by the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977).

On the labor certification application form and the Form I-140, Immigrant Petition for Alien Workers, the Petitioner stated that it would employ the Beneficiary in the offered marketing associate's job at an address in [redacted] California. The forms identify the address as both the company's mailing and worksite address.

Through online research, SCOPS discovered that a shipping store operated from the [redacted] address and that the address's unit number corresponded to a mailbox in the store. Thus, contrary to the information on the Petitioner's labor certification and Form I-140, the address did not appear to be the offered job's worksite. The Petitioner could not employ the Beneficiary in the offered job under the labor certification's terms, as he could not perform the job's duties from the listed address.

[1] A MSA is geographical entity defined by the U.S. Office of Management and Budget. *See* U.S. Census Bureau, "Metropolitan and Micropolitan," www.census.gov/programs-surveys/metro-micro.html.

SCOPS issued a request for additional evidence (RFE) and provided the Petitioner with about 12 weeks to respond. The RFE asked the company to "[s]ubmit evidence to show that there is a proper worksite available for the intended employment since the priority date which is within the same [MSA] as the original location."

The Petitioner's RFE response included a letter from its chief financial officer (CFO). The letter identifies the [redacted] address as the company's mailing address and provides a company worksite address in [redacted], California, which lies in the same MSA as [redacted]. The Petitioner also provided a copy of a commercial lease, showing that the company began renting a 300-square-foot office at the [redacted] address in June 2024, after the petition's June 19, 2023 priority date but before the petition's December 2024 filing. The company's RFE response did not explain why the company did not differentiate between its mailing and worksite addresses on the prevailing wage determination and labor certification applications and on the immigrant visa petition.[2]

Noting the lease's June 2024 date, SCOPS found that the Petitioner did not demonstrate the existence of a worksite for the offered job in the listed MSA at the time of the petition's priority date. SCOPS therefore denied the petition, finding that the company did not establish its intent to employ the Beneficiary in the offered job at the time of the labor certification application's filing.

On appeal, the Petitioner contends that SCOPS erred. It submits copies of lease amendments and invoices to the company purportedly showing that, since 2017, its CFO has rented workspace elsewhere within the same MSA. The company therefore argues that it has continuously maintained a worksite in the relevant MSA since the petition's June 19, 2023 priority date.

SCOPS' RFE, however, specifically asked the Petitioner for evidence of a worksite in the applicable MSA since the petition's priority date and provided the company with a reasonable opportunity to provide it. The company does not claim that the evidence on appeal was unavailable at the time of its RFE response. We therefore decline to consider the Petitioner's new evidence on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)) (declining to consider new evidence on appeal when, before a decision's issuance, a petitioner received notice of the required evidence and a reasonable opportunity to provide it)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring submission of all evidence in response to a RFE together at one time).

The Petitioner did not demonstrate that a worksite for the offered job existed in the area of intended employment listed on the labor certification application at the time of its filing or that the company otherwise intended to employ the Beneficiary within that area. We cannot conclude that the facts of the petition are true. The company therefore did not establish its intent to employ him in the offered job. We will therefore affirm the petition's denial.

[2] State records also list the [redacted] address as the Petitioner's mailing and principal address. *See* Cal. Sec'y of State, "Business Search," bizfileonline.sos.ca.gov/search/business.

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.