U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41990849

Date: MAR. 23, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a construction company, seeks to employ the Beneficiary as an administrative assistant. The company requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as an "other worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring less than two years of training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner omitted required initial evidence. On appeal, the company submits the missing evidence and asks us to approve the petition or remand it for adjudication.

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, by denying the petition for lack of required initial evidence, SCOPS did not abuse its discretion. We will therefore dismiss the appeal.

I. LAW

Immigration as an "other," or "unskilled," worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: (1) insufficient U.S. workers are able, willing, qualified, and available for an offered position; and (2) an alien's employment in the position would not harm wages and 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, 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). USCIS determines, among other things, whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(D).

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(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

II. ANALYSIS

Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations or other USCIS instructions. 8 C.F.R. § 103.2(b)(1).

> If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

8 C.F.R. § 103.2(b)(8)(ii).

The Petitioner's petition included a labor certification, stating that the offered administrative assistant job had an annual proffered wage of $50,669 and required a high school diploma and at least one year's experience in the offered job or a related occupation. The petition, however, lacked evidence of the company's ability to pay the proffered wage or the Beneficiary's qualifying education for the job. Also, a letter from a former employer of the Beneficiary did not demonstrate that she had the requisite amount of experience. Rather than ask the Petitioner for the missing evidence, SCOPS denied the petition.

On appeal, the Petitioner submits copies of: its federal income tax returns for 2023 and 2024; the Beneficiary's high school certificate from Brazil; and letters from two other former employers of her. The company argues:

> [T]he instant case involves no post-filing change in this offered position, the job requirements, or the beneficiary's qualifications. The petitioner is not seeking to redefine the terms of the certified position or supplement the record with new substantive claims, but rather to provide corroborating documentation that clarifies and substantiates pre-existing qualifications and financial ability.

The Petitioner's appellate evidence appears to demonstrate eligibility for the requested benefit. But SCOPS did not abuse its discretion by denying the petition. Both applicable regulations and instructions to Form I-140, Immigrant Petition for Alien Workers, require a petition for an other worker to include evidence of the petitioner's ability to pay the proffered wage and the beneficiary's satisfaction of any education, training, or experience requirements stated on an accompanying labor certification. *See* 8 C.F.R. §§ 204.5(g)(2), (l)(3)(ii)(D); USCIS, "Instructions for Petitioner for Alien Workers," *Initial Evidence* 7., *General Evidence* 2., www.uscis.gov/i-140.

The Petitioner's filing omitted required initial evidence and did not establish eligibility for the requested benefit. Under 8 C.F.R. § 103.2(b)(8)(ii), SCOPS therefore had discretion to deny the petition.

III. CONCLUSION

SCOPS did not abuse its discretion by denying a petition that lacked required initial evidence and did not establish eligibility for the requested benefit.

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.