U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40736296

Date: MAY 8, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a manufacturer of programmable logic devices, seeks to employ the Beneficiary as a component design engineer. The company requests his 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 master's degrees or their equivalents. *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 possession of all the skills required for the offered job. Specifically, SCOPS found insufficient evidence of his experience with "Verilog" or "Validation Concepts/Methodologies" as listed in the job's requirements on the company's application for a prevailing wage determination from the U.S. Department of Labor (DOL). On appeal, the Petitioner contends that SCOPS disregarded evidence that the company does not require those skills for the job and did not advertise their need to U.S. workers.

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 did not determine the validity of the accompanying DOL labor certification and that the Petitioner did not support its job advertising claims with corroborating evidence. We will therefore withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as 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).

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. The Labor Certification's Validity

Unless accompanied by an application for Schedule A designation or a request for a national interest waiver under section 203(b)(2)(B)(i) of the Act, an advanced degree petition must include an individual labor certification from DOL. 8 C.F.R. § 204.5(k)(4)(i). An individual labor certification remains valid for "the particular job opportunity" stated on it. 20 C.F.R. § 656.30(c)(2).

To use another employer's labor certification for an alien, a petitioner must demonstrate its status as the employer's successor in interest. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481, 482-83 (Comm'r 1986). For immigration purposes, a successor must:

- Demonstrate that the offered job remains the same as the job opportunity stated on the labor certification;
- Establish the petition's approvability as of its priority date, including the predecessor's initial ability to pay the proffered wage; and
- Fully describe and document its assumption of ownership from the predecessor.

See generally 6 *USCIS Policy Manual* E.3(F).

The Petitioner's labor certification for the Beneficiary bears the name of a corporation other than the Petitioner. The Petitioner stated and provided evidence that, during the pendency of the labor certification application, the company acquired certain assets and associated employees – including the Beneficiary – from the labor certification employer. The Petitioner therefore asserts itself as the employer's successor in interest and states that the labor certification remains valid.

SCOPS, however, did not make any findings regarding the labor certification's validity or the Petitioner's qualifications as the certification employer's successor in interest. We will therefore remand the matter so SCOPS can consider the labor certification's validity.

B. The Required Special Skills

A petitioner must demonstrate that a beneficiary met all DOL-certified requirements of an offered job by a petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is February 2, 2024, the date DOL accepted the labor

certification application 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 offered job's minimum requirements. USCIS may neither ignore certification terms nor impose unstated requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *contents* of the labor certification") (emphasis in original).

The labor certification for the Beneficiary does not directly state the offered job's requirements. Rather, the labor certification refers to the labor certification employer's prior application for a prevailing wage determination (PWD).[1]

The PWD states the primary requirement of the offered component design engineer job as a bachelor's degree in electrical/electronic engineering and/or computer engineering, or science, or a related science or engineering discipline, plus seven years' experience in the job offered or a related occupation. The application also states that the job requires the following special skills: "GLS, Power Aware Simulation, Assertion, Functional and Code coverage, SoC verification, Verilog, System Verilog, Testbench development, UVM Methodology, Validation Concepts/Methodologies." Further, the PWD states acceptance of an alternative set of requirements: a master's degree in the same fields and five years' of experience. The alternative requirements include the same special skills listed in the primary requirements.

In an attempt to document the Beneficiary's qualifying special skills, the Petitioner submitted a letter from his manager at a former employer, confirming his possession of all the skills except two: Verilog and Validation Concepts/Methodologies. In response to SCOPS' request for additional evidence, the company noted that section E.5 of the labor certification, "Additional conditions about the offered wage," states that the employer's advertising for the offered job during the labor certification proceedings omitted Verilog and Validation Concepts/Methodologies. The Petitioner therefore argues that, although the PWD lists those two special skills as requirements, the offered job does not actually require them.

The record, however, lacks corroborating documentary evidence that the relevant advertisements and recruitment materials for the offered job omitted the need for Verilog and Validation Concepts/Methodologies as claimed. On remand, SCOPS should ask the Petitioner to submit copies of the specific ads and recruitment materials.

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[1] The Beneficiary's former employer filed the labor certification application after June 1, 2023. *See generally* 6 *USCIS Policy Manual* E.6(A)(2), www.uscis.gov/policy-manual ("Effective June 1, 2023, DOL required petitioners to electronically file permanent labor certification applications using its Foreign Labor Application Gateway (FLAG) system, which contains a revised Form ETA-9089[, Application for Permanent Employment Certification].") Thus, the labor certification incorporates the offered job's requirements as listed on the prior 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).")

C. The Required Employment Experience

Although unaddressed by SCOPS, the Petitioner also did not demonstrate the Beneficiary's qualifying employment experience for the offered job.

As previously indicated, the Petitioner's PWD states the company's acceptance of a master's degree in a relevant field and five years' experience in the offered job or a related occupation. The company demonstrated the Beneficiary's possession of a master's degree in a relevant field.

As purported proof of the Beneficiary's qualifying experience, the Petitioner submitted three letters from his former employer in India. *See* 8 C.F.R. § 204.5(g)(1) (requiring petitioners to document beneficiaries' qualifying experience with letters from their former or current employers). Consistent with the regulation, the letters confirm the Beneficiary's employment dates and describe his experience in the related occupation of "R&D Engineer." But all three letters indicate that that job was either his "most recent" or "last" position with the employer. Thus, the letters suggest the Beneficiary's performance of other roles with the former employer and, without further evidence, would not demonstrate that he had the full amount of experience in the job offered or a related occupation.

SCOPS did not inform the Petitioner of this evidentiary deficiency. Thus, on remand, SCOPS should allow the company to submit additional evidence of the Beneficiary's potential qualifying experience.

III. CONCLUSION

SCOPS did not determine the Petitioner's eligibility as the labor certification employer's successor in interest and, thus, the accompanying certification's validity. Also, the company did not submit documentary evidence to support its assertion that advertisements for the offered job omitted the special skills of Verilog and Validation Concepts/Methodologies. The company further did not demonstrate the Beneficiary's claimed employment in a related occupation for at least five years.

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