U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37911059

Date: MAY 21, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of boat sales and services, seeks to employ the Beneficiary as an international legal assistant. The company requests his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered job. On appeal, the company acknowledges that the record lists inconsistent prior employment dates for the Beneficiary but contends that it established his satisfaction of the job's minimum experience requirements.

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 agree with SCOPS that the company has not established the Beneficiary's qualifying experience for the job. We will therefore dismiss the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must apply to the U.S. Department of Labor (DOL) for 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 and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); *Kanapuram v. Dir., USCIS*, 131 F.4th 1302, 1304-05 (11th Cir. 2025).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F); 8 C.F.R. § 204.5(l)(3)(i); *Kanapuram*, 131 F.4th at 1304-05. 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(l)(3)(ii)(C).

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; *Kanapuram*, 131 F.4th at 1304-05.

II. ANALYSIS

A. The Beneficiary's Experience

A petitioner must demonstrate that, by a petition's priority date, a beneficiary met all DOL-certified requirements of an offered job. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is November 22, 2022, the date DOL accepted the Petitioner's 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 job's minimum requirements. *See* 20 C.F.R. § 656.17(i)(1) (requiring job criteria on a labor certification application to represent an employer's "actual minimum requirements for the job opportunity"). The Agency may neither ignore a certification term 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 *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states that the offered job of international legal assistant involves working with "senior management" to ensure that the company's products and services for Latin American clients comply with local, national, and international laws. The labor certification states that the job requires a U.S. bachelor's degree or a foreign equivalent degree in "Legal Studies" and two years' experience in the offered job. The company indicated on the labor certification application that it will not accept experience in an alternate occupation. Further, the Petitioner's response to Question H.14 of the labor certification application, "Specific skills and other requirements," states: "Must have good writing skills. Must have overseen other legal personnel and worked with international legal teams. Must be familiar and have worked with the civil law system of law."

The Beneficiary's educational qualifications for the offered job are not at issue. On the labor certification, he attested that, by the petition's priority date, he gained the following full-time experience:

- About five years, six months as chief executive officer (CEO)/president of a U.S. dry cleaning business, from June 2017 to November 2022;
- About three years as CEO of a telecommunications company in Ecuador, from January 2013 to January 2016;
- About four years as a law clerk for an Ecuadorian law firm, from January 2002 through December 2005; and
- About two years as a "Legal Manager" for another Ecuadorian law firm, from January 2000 to January 2002.

As evidence of the Beneficiary's qualifying experience, the initial filing included a copy of his resume. To demonstrate experience, however, petitioners must submit letters from beneficiaries' former employers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must provide the employers' names, addresses, and titles, and describe the beneficiaries' experiences. *Id.*

Lacking regulatorily required evidence of the Beneficiary's claimed experience, SCOPS issued the company a written request for additional evidence (RFE). The RFE requested the company to provide a regulatorily compliant letter, "preferably on the employer's official letterhead," that also states the Beneficiary's employment dates with the employer.

The Petitioner's RFE response included two employment letters: one from a former president of the telecommunications company that purportedly employed the Beneficiary as CEO; and one from the president of the law firm where he claimed to have clerked. The telecommunications company's former president stated that the Beneficiary served as the company's president from December 2013 to February 2016, not as CEO from January 2013 to January 2016 as listed on the labor certification. The other letter states his employment with the law firm as an attorney from March 2002 to June 2005, not as a law clerk from January 2002 through December 2005 as listed on the labor certification.

The RFE response also included copies of corporate documents obtained from an Ecuadorian government agency regarding the Beneficiary's selection as president of the government-owned telecommunications company and listing its presidents and their appointment dates. Consistent with the letter from the telecommunications company's former president, the documents indicate the Beneficiary's tenure as the company's president from December 2013 to February 2016.

After reviewing the Petitioner's RFE response, SCOPS issued a notice of intent to deny (NOID) the petition. The NOID noted that neither employment letter included the employer's address or bore its letterhead. The NOID also noted that, in a 2010 application for a U.S. visitor's visa, the Beneficiary attested that the law firm employed him from June 2002 to April 2007, not from January 2002 through December 2005 as he stated on the labor certification application and not from March 2002 to June 2005 as listed in the letter from the firm's president. Further, while the Beneficiary attested on the labor certification that the telecommunications company employed him from January 2013 to January 2016, he stated on his 2017 U.S. nonimmigrant investor visa application that he worked for the company from January 2014 to March 2016. The 2017 visa application also indicated that, at that time, he worked for two other businesses omitted from the labor certification application. The NOID alleged that the evidentiary inconsistencies in the Beneficiary's employment history cast doubt on his claimed qualifying experience for the offered job. *See Marllantas, Inc. v. Rodriguez*, 806 F. App'x 864, 869 (11th Cir. 2020); *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

The Petitioner's NOID response contained: a written legal analysis from an Ecuadorian attorney regarding the evidence of the Beneficiary's work for the telecommunications company and the law firm; a letter from the president of the Ecuadorian law firm on the firm's stationery repeating the content of her prior letter; and a copy of a 2014 letter from an official of the telecommunications company stating the Beneficiary's employment as the firm's president from December 2013 to February 2016.

SCOPS found the employment letters from the telecommunications company and the law firm insufficient because, contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), they lacked the employers' addresses. Also, SCOPS found that the Beneficiary's employment dates stated in the law firm letter differ from those to which he attested on the labor certification application. SCOPS stated: "Based upon inconsistencies surrounding the employment history of the beneficiary, it cannot be concluded that he meets the requirements of the labor certification."

The most reliable evidence of the telecommunication company's employment of the Beneficiary are the documents from the Ecuadorian government agency. These independent, objective records establish the start of his tenure as the company's president as December 2013. The documents also confirm that the signatory of the company letter succeeded the Beneficiary as the company's president in April 2016, further supporting the letter's reliability. Also, the letter cited online 2015 news articles identifying the Beneficiary as the company's president and general manager. A preponderance of the evidence therefore demonstrates the telecommunications company's employment of him as president from December 2013 to February 2016.

The record, however, still does not establish that the Beneficiary's experience at the telecommunications company constitutes qualifying experience for the offered job. The labor certification states that the job requires at least two years' "experience in the job offered" and excludes qualifying experience in any alternate occupation. On a labor certification application, the phrase "experience in the job offered" means "experience performing the key duties of the job opportunity, specifically those listed in Question H.11 [of the labor certification application]." *See, e.g., Matter of Symbioun Techs., Inc.* 2010-PER-01422, 2011 WL 5126284, at *2 (BALCA Oct, 24, 2011) (citations omitted). The Petitioner's response to Question H.11 of the labor certification application states that – besides ensuring that products and services for the company's Latin American clients comply with local, national, and international law – the job involves:

- researching tax and corporate laws in various jurisdictions;
- preparing reports about local laws for upper management;
- reviewing and revising agreements of Latin American and Caribbean clients; and
- working with those clients to provide documentation and information needed for any disputes that may arise in their jurisdictions.

The letter from the telecommunication company's former president, who served as financial administration manager during the Beneficiary's tenure as president, does not indicate the Beneficiary's performance of the offered job's duties listed in response to Question H.11 on the labor certification. Rather, the letter indicates that, as president, he performed executive-level tasks, including: establishing the company's long-term vision and mission; designing and overseeing implementation of strategies to achieve corporate objectives; and overseeing and coordinating work of the senior management team. Also, the letter does not specify that the Beneficiary oversaw legal personnel and "worked with international legal teams," as the Petitioner's response to Question H.14 on the labor certification application requires. The Petitioner therefore has not established the Beneficiary's claimed qualifying experience with the telecommunications company.

The letters from the law firm where the Beneficiary purportedly "clerked" state that his duties as an attorney included: providing legal advice on the company's daily management and operations;

drafting, reviewing, and negotiating contracts to ensure their favorability and legal compliance; and ensuring the company's compliance with other laws and regulations. These tasks match or approximate the duties of the offered job. Also, consistent with the Petitioner's response to Question H.14 on the labor certification, the letter indicates that he oversaw legal personnel and worked with legal teams. Further, the firm's resubmitted letter on company letterhead states the firm's address, which matches the address to which the Beneficiary attested on the labor certification. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A) (requiring that an experience letter supporting a professional petition include an employer's "address").

As SCOPS found, however, the labor certification and law firm letters state different employment dates for the Beneficiary at the firm. The labor certification states his work from January 2002 through December 2005, while the letters indicate employment dates of March 2002 to June 2005. Also, the Beneficiary's resume indicates that he worked as a partner in his own law firm from "2004-2005" and as a university professor from "2004-2006." These additional listed jobs potentially conflict with his claimed full-time qualifying experience at the law firm. The Petitioner has not explained the discrepancies in these employment dates. *See Marllantas,* 806 F. App'x at 869; *Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies). Counsel asserts that "the beneficiary misremembered the [employment] dates and provided what he recalled [on the labor certification]." But counsel's assertion does not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("[S]tatements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). We acknowledge that the record also contains inconsistent dates regarding the Beneficiary's employment with the telecommunications company. But the Petitioner resolved those discrepancies with independent, objective evidence in the form of corporate records from a government agency. The company has not similarly provided independent objective evidence to corroborate that the Beneficiary gained at least two years of qualifying full-time employment at the law firm.

Because of the unresolved evidentiary discrepancies, the Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered job. We will therefore affirm the petition's denial on this ground.

B. Ability to Pay the Proffered Wage

Although unaddressed by SCOPS, the Petitioner also has not demonstrated its required continuing ability to pay the offered job's proffered wage.

A petitioner must demonstrate its continuing ability to pay a proffered wage from a petition's priority date until a beneficiary obtains U.S. permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must generally include copies of a business's annual reports, federal tax returns, or audited financial statements. *Id.*

When determining ability to pay, USCIS examines whether a petitioner paid a beneficiary the full proffered wage each year, beginning with the year of a petition's priority date. *See generally* 6 *USCIS Policy Manual* E.4(C)(1), www.uscis.gov/policy-manual. If a petitioner did not annually pay the full

proffered wage or did not pay a beneficiary at all, the Agency considers whether the business generated annual amounts of net income or net current assets sufficient to pay any differences between the proffered wage and the wages paid. *See generally* 6 *USCIS Policy Manual* E.4(C)(2). If net income and net current assets are insufficient, USCIS may consider other potential factors affecting a petitioner's ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967); *see generally* 6 *USCIS Policy Manual* E.4(C)(3).[1]

The Petitioner's labor certification states the proffered wage of the offered job of international legal assistant as $57,000 a year. As previously indicated, the petition's priority date is November 22, 2022.

The record does not indicate the Petitioner's employment of the Beneficiary, and the company did not submit any evidence that it paid him. Thus, based solely on wages paid, the company has not demonstrated its ability to pay the proffered wage.

The petition included a copy of the Petitioner's federal income tax return for 2022, the year of the petition's priority date. The tax return reflects that, that year, the corporation generated net income of $22,969 and net current assets of $109,937. The net income amount does not equal or exceed the annual proffered wage of $57,000. The company's net income therefore does not demonstrate its ability to pay in 2022. The net current asset amount, however, exceeds the annual proffered wage. The Petitioner's net current assets therefore establish its ability to pay the proffered wage in 2022.

As previously indicated, a petitioner must demonstrate its ability to pay a proffered wage "at the time the [petition] priority date is established and continuing until the beneficiary obtains lawful permanent residence." 8 C.F.R. § 204.5(g)(2). The Petitioner has demonstrated its ability to pay in 2022, the year of the petition's priority date. But the company has not established its ability to pay in following years. At the time of the NOID's issuance in October 2024, regulatorily required evidence of the Petitioner's ability to pay in 2023 should have then been available or available soon. *See* U.S. Internal Revenue Serv. (IRS), "Instructions for [IRS] Form 7004," www.irs.gov (providing businesses with an automatic, seven-month extension in which to file their income tax returns). The record does not explain why SCOPS did not ask the company for additional evidence of its ability to pay the proffered wage in 2023.

In any further filings in this matter, the Petitioner must submit regulatorily required evidence of its ability to pay the proffered wage in 2023 and, if available, 2024. *See* 6 *USCIS Policy Manual* E.4(A) (requiring ability-to-pay evidence "for each *available* year from the [petition's] priority date") (emphasis added). The company may submit additional evidence of its ability to pay in the applicable years, including materials supporting the factors stated in *Sonegawa*. *See Matter of Sonegawa*, 12 I&N Dec. at 614-15; *see also* 6 *USCIS Policy Manual* E.4(C)(3) ("The ability to pay analysis is more nuanced than simply reviewing wages paid, net income, and net current assets.")

[1] Federal courts have upheld USCIS' method of determining a petitioner's ability to pay a proffered wage. *See, e.g., River St. Donuts, Inc. v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Beauty Café USA, Inc. v. Richardson*, No. 20-61563-CIV-SINGHAL, 2021 WL 5353731, at *3 (S.D. Fla. Sept. 17, 2021).

III. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's qualifying experience for the offered job. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.