U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40831961

Date: MAY 21, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a U.S. city, seeks to employ the Beneficiary as its director of planning and community development. The city requests her classification under the employment-based, third-preference immigrant visa category (EB-3) 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). Organizations 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 establish the Beneficiary's possession of all the skills required for the offered job. Specifically, SCOPS found that, contrary to the requirements listed on the prevailing wage determination from the U.S. Department of Labor (DOL), the city demonstrated neither her use of "BS&A" software nor her knowledge of "Tax Capture Districts." On appeal, the Petitioner denies that the job requires those skills. The city argues that it did not advertise them as requirements to U.S. workers during the labor certification proceedings and that it did not exclude any applicants who lacked them.

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 the record raises additional issues about the offered job's requirements. SCOPS did not notify the Petitioner of these additional issues, and the Petitioner did not submit copies of all its labor certification recruitment materials. 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 a professional generally follows a three-step process. First, a prospective employer must obtain certification from DOL 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)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).

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); 8 C.F.R. § 204.5(a). 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)(i), (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.

II. ANALYSIS

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 October 23, 2023, 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 Petitioner's labor certification does not directly list the requirements of the offered job of planning and community development director. Rather, the labor certification refers to the city's previously filed application for prevailing wage determination (PWD).[1]

The Petitioner's PWD states the offered job's minimum requirements as a U.S. bachelor's degree or a foreign equivalent degree in urban studies and planning, public administration, or a closely related field, plus three years' experience. The PWD does not state any alternate job requirements.

In the section titled "Special Skills or Other Requirements," the PWD details the job's experience requirements. The application states that the job requires at least three years of "progressively responsible planning or community development experience as a Director of Planning and Community Development or a substantially similar position in municipal government." The PWD further states that experience must include:

[1] The Petitioner filed its 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 Petitioner's labor certification incorporates the requirements for the offered job as listed on the city's 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).")

> utilizing business software applications, Adobe InDesign software, Illustrator, Photoshop, SketchUp or other 3D Design Software, BS&A, and QGIS in relation to conducting data and design analysis, create presentations or narrative reports, updating documents, zoning ordinances, community and development maps, special use permitting, and site review processes; utilizing planning, zoning, urban design, local government principles and practices, operation and structures, planning and community development, community engagement, architectural principles and practices, project management, supervision, and budgeting; Master Plan development and implementation best practices; Tax Capture Districts; and Form Based code principles and implementation best practices.[2]

The Beneficiary's educational qualifications for the offered job are not at issue. The Petitioner documented that, in 2015, a U.S. university awarded her a master of science degree in architecture and urban design.

On the labor certification, the Beneficiary attested that, by the petition's priority date, she gained more than three years of full-time, potentially qualifying experience. She stated that another U.S. city employed her as a senior planner for about 38 months, from August 2019 to October 2022.

To demonstrate qualifying experience, a petitioner must submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). A letter must include the employer's name, address, and title, and describe a beneficiary's experience. *Id.* The Petitioner submitted a letter from the Beneficiary's former employer confirming employment information listed on the labor certification and otherwise complying with the regulation.

SCOPS, however, noted that the letter from the Beneficiary's former employer confirms that she has all the skills listed in the PWD for the offered job except two: BS&A or Tax Capture Districts.

In response to SCOPS' request for additional evidence, the Petitioner – reiterating information in the initial petition – stated that it did not advertise the requirements for BS&A and Tax Capture Districts to U.S. workers during the labor certification proceedings. As partial proof, it submitted copies of its notice of filing, job order, website ads, and campus placement notice, all omitting mention of BS&A or Tax Capture Districts. *See* 20 C.F.R. §§ 656.10(d)(1)(ii), 656.17(e)(1)(i)(A), (ii)(B) (requiring labor certification employers to notify their employees of labor certification applications, place job orders with state workforce agencies, and, for professional occupations, engage in additional recruitment steps). The Petitioner also claimed that it did not reject U.S.-worker applicants because they lacked those skills. The city therefore argued that SCOPS erred in finding that the job requires the skills. But the city did not submit copies of its newspaper ads for the offered job or its recruitment report. *See* 20 C.F.R. § 656.17(e)(1)(i)(B), (g)(1) (requiring labor certification employers to place newspaper ads for offered, professional occupations on two different Sundays and to prepare recruitment reports describing recruitment steps and their results).

[2] The PWD also states that the offered job requires a valid driver's license, a safe driving record, and residency within the city's county or within 12 miles of the city's limits.

Also, the record raises an additional concerns about the offered job's requirements beyond those that SCOPS identified. The recruitment materials that the Petitioner submitted list a job requirement that the PWD application does not. The materials require experience with a "Zoning Application Portal." Further, the letter from the Beneficiary's former employer confirms her prior use of a Zoning Application Portal. *See* section 204(b) of the Act (requiring a determination "that the facts stated in the petition are true"); 8 C.F.R. § 103.2(b)(1) ("Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.") Prior to approving a visa petition, USCIS must investigate the facts of each case to ensure the facts stated in the petition, which necessarily includes the labor certification, are true. *See* INA § 203(b)(3)(C); § 204(b); 8 CFR §§ 204.5(a)(2), 204.5(k)(4)(i) and (l)(3)(i). The Petitioner should have an opportunity to address this inconsistency.

In light of the foregoing, we will remand the matter for SCOPS to further examine the petition. SCOPS may wish to ask the Petitioner to provide copies of additional recruitment materials, not previously sent, regarding the offered job, including the city's newspaper ads and its recruitment report.

III. CONCLUSION

SCOPS did not notify the Petitioner of additional issues regarding the offered job's requirements, and the city did not submit copies of all its labor certification recruitment materials.

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