U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37721460

Date: MAY 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of nursing services, seeks to employ the Beneficiary as a registered nurse. The company requests her 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 experience. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that it lacks a valid labor certification and that the Petitioner cannot challenge that determination. On appeal, the company contends that SCOPS misapplied U.S. Department of Labor (DOL) regulations.

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 we have jurisdiction to review the decision and that the company's labor certification application complies with DOL regulations. We will therefore sustain the appeal.

I. LAW

Immigration as a skilled worker usually follows a three-step process. First, to permanently fill a job with a foreign worker, a prospective U.S. employer must obtain DOL certification. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). If DOL certifies a job, an employer must next submit the 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). Finally, if USCIS grants the petition, a noncitizen beneficiary may apply abroad for an immigrant visa or, if eligible, "adjustment of status" in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

DOL, however, has already determined that the United States lacks sufficient nurses and that employment of aliens in these "Schedule A" jobs will not harm the wages or working conditions of U.S. workers in similar positions. 20 C.F.R. § 656.5. Thus, Schedule A employers need not advertise their jobs to U.S. workers, and DOL authorizes USCIS, in immigrant visa petition proceedings, to adjudicate Schedule A labor certification applications. 20 C.F.R. § 656.15(a). Therefore, in this

matter, USCIS not only adjudicates the petition but also its accompanying labor certification application.

II. ANALYSIS

A. Appellate Jurisdiction

SCOPS' notified the Petitioner that "[t]here is no appeal from this decision." We will therefore first consider our appellate jurisdiction over this matter. *See Parrish v. Merit Sys. Prot. Bd.*, 485 F.3d 1359, 1362 (Fed. Cir. 2007) (stating that a federal agency "has the authority, indeed the obligation, to determine its own jurisdiction over a particular appeal").

We have jurisdiction over appeals of the case types listed in former 8 C.F.R. § 103.1(f)(3)(iii). Dep't of Homeland Sec. Delegation No. 0150.1 (effective Mar. 1, 2003). These case types include employment-based immigrant visa petitions. 8 C.F.R. § 103.1(f)(3)(iii)(B) (2002).

In finding that the Petitioner could not appeal this decision, SCOPS' cited a DOL regulation stating that "[t]he Schedule A determination of [USCIS] is conclusive and final." 20 C.F.R. § 656.15(e). The remainder of the regulation states: "The employer, therefore, may not appeal from any such determination *under the review procedures at [20 C.F.R.] § 656.26*." (emphasis added). Thus, considering the regulation's full context, the provision indicates only that "the denial of a Schedule A case cannot be appealed through [DOL's] BALCA [the Board of Alien Labor Certification Appeals]." *See* 6 *USCIS Policy Manual* E.7(I) n.71. The DOL regulation therefore does not deprive us of appellate jurisdiction in this matter.

Also, the former regulation at 8 C.F.R. § 103.1(f)(3)(iii) carves out a jurisdictional exception "when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B). We acknowledge that SCOPS denied the labor certification application accompanying this petition. But USCIS has interpreted the exception to apply only to denials based on *omissions* of timely filed labor certifications or applications for Schedule A designation. This petition included a timely filed Schedule A application for a registered nurse with the required documentation. Thus, even though SCOPS denied the application, the petition included the application, and the exception therefore does not bar our jurisdiction over this appeal. USCIS policy supports this determination. *See* 6 *USCIS Policy Manual* E.7(I) ("The [Schedule A] petitioner retains the right to file an appeal of USCIS' decision with the Administrative Appeals Office (AAO).")

For the foregoing reasons, we have authority to adjudicate the Petitioner's appeal. We will therefore withdraw SCOPS' contrary finding. We next review the denial of the company's Schedule A labor certification application.

B. The Labor Certification Application

To qualify for Schedule A labor certification processing, foreign nurses must:

- Have certificates from the Commission on Graduates of Foreign Nursing Schools (CGFNS);

- Hold permanent, full, and unrestricted licenses to practice professional nursing in their states of intended employment; or
- Have passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN), administered by the National Council of State Boards of Nursing.

20 C.F.R. §§ 656.5(a)(2), 656.15(c)(2); *see also George v. United States*, 694 Fed. Appx. 600, 601 (9th Cir. 2017). The Petitioner's labor certification application states the California company's proposed employment of the Beneficiary at a nursing home client in New Mexico. The Petitioner submitted evidence of the Beneficiary's New Mexican nursing license and NCLEX passage.

Schedule A applications for non-union jobs must also include evidence that employers notified their employees of the applications' filings. The Immigration Act of 1990, Pub. L. No. 101-649, § 122(b), 104 Stat. 4978 (Nov. 29, 1990); 20 C.F.R. §§ 656.10(d)(1), 656.15(b)(2).[1] Employers must post these filing notices, commonly called "posting notices," at applicable worksite locations for at least ten consecutive business days. 20 C.F.R. § 656.10(d)(1)(ii). Notices for Schedule A applications must include job descriptions and pay rates. 20 C.F.R. § 656.10(d)(6).

The Petitioner's posting notice states the offered job's requirements, which include an associate's degree in nursing. The notice also states that a candidate must have "a Registered Nurse license in any U.S. state or in the alternative, must have passed the NCLEX exam in any U.S. state or must have [a] CGFNS certificate." SCOPS noted that the company's notice describes one job requirement as a "Registered Nurse License in *any* state." (emphasis added). SCOPS found that this requirement conflicts with the rule that a Schedule A nurse hold a license "in the state of *intended employment*." 20 C.F.R. §§ 656.5(a)(2), 656.15(c)(2) (emphasis added). SCOPS concluded that, because the notice's requirements would allow nurses without New Mexican licenses to qualify for the offered job, the notice violates DOL regulations.

SCOPS, however, misinterpreted the applicable DOL regulations. The regulations state that "[a]liens . . . [w]ho hold" nursing licenses in their states of intended employment qualify for Schedule A processing, 20 C.F.R. § 656.5(a)(2), and require evidence "that the alien holds" such a license. 20 C.F.R. § 656.15(c)(2). The Petitioner's labor certification application complies with these regulations because the company submitted evidence that the Beneficiary has a New Mexican nursing license.[2] Additionally, consistent with 20 C.F.R. § 656.5(a)(2), the company's posting notice alternatively allows qualification for the offered job based on either passage of the NCLEX exam or possession of CGFNS certification.

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[1] Schedule A applications for union positions must include evidence that employers notified bargaining representatives. 20 C.F.R. §§ 656.10(d)(1)(i), 656.15(b)(2).

[2] We note that many U.S.-licensed nurses qualify to immediately begin work in the offered job without New Mexican licenses. New Mexico is one of 42 states and territories to sign the Nurse Licensure Compact. CGFNS, "Licensure," www.cgfns.org/licensure/new-mexico. Nurses licensed in other compact states need not apply for New Mexico licenses unless the nurses plan to make the state their "primary state of residency." *Id.* Also, nurses moving from other compact states to a New Mexican primary residence must apply for New Mexican licensure within 60 days. *See* Nurse Licensure Compact, www.nursecompact.com. The offered job's requirements therefore do not violate state regulations. *See* 20 C.F.R. § 656.10(c)(7) (requiring a labor certification employer to attest that "[t]he job opportunity's terms, conditions and occupational environment are not contrary to Federal, state or local law").

The offered job meets the requirements of the requested immigrant visa category. Jobs in this category must require at least two years of training or experience. Section 203(b)(3)(A)(i) of the Act. The offered job does not require any training or experience. But "[r]elevant post-secondary education may be considered as training." 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker"). Thus, the job's requirement for an associate's degree equates to two years of training, qualifying for the requested immigrant visa category.

The Beneficiary also meets the offered job's requirements. The Petitioner submitted evidence that she has the foreign equivalent of a U.S. associate's degree in nursing. As previously indicated, the record shows that she also has a New Mexican nursing license and passed NCLEX.

III. CONCLUSION

We have jurisdiction to review this appeal, and the Petitioner's posting notice complies with DOL regulations. We will therefore withdraw the Director's contrary findings.

ORDER: The appeal is sustained.