U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39895158

Date: MAY 27, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a semiconductor manufacturer, seeks to employ the Beneficiary as a component design engineer, under the second-preference, immigrant classification for members of the professions with advanced degrees or their equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the minimum requirements for the offered position, as set forth on the labor certification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (Form ETA-9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign worker in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the alien 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 July 31, 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 labor certification does not directly state the offered job's requirements. Rather, the labor certification refers to the Petitioner's Form ETA-9141, Application for Prevailing Wage Determination (PWD).[1] The education, training, experience, and other requirements for the proffered position are set forth at Part F of the DOL.

In this case, Part F.b of the PWD states that the position of component design engineer has the following minimum requirements:

1.	Education: Minimum U.S. diploma/degree required	Master's
1-b.	Major and/or field of study required	Electrical/Electronic Engineering &/or Computer Engineering or Science, or related Science or Engineering Discipline
2.	Does the employer require second U.S. diploma/degree?	No
3.	Is training for the job opportunity required?	No
4.	Is employment experience required?	Yes

[1] The Petitioner 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).")

4-a.	Specify the number of months of experience required	36
4-b.	Indicate the occupation required	Job offered or related
5.	Does the employer require any specific or other requirements?	Yes
5-a.	Other Special Skills or Requirements	Computer Architecture, Digital Design, EDA Tools, Emulation Skills, Logic Design, Simulation and/or Validation, Scripting Languages e.g. PERL or Python or Tcl/Tk

At Part F.c of the PWD, the Petitioner stated that no alternate sets of education, training, and/or experience are accepted.

At Part E.5 of the Form ETA-9089, the Petitioner stated, "Emulation Skills was not used in the US labor market test and not required for the PERM position. The exclusion of this skill has no effect on the prevailing wage. This skill was not used to disqualify any US workers."

SCOPS determined that, since the minimum requirements listed on the PWD stated that emulation skills were required for the offered position, the Petitioner is required to establish that the Beneficiary possessed these skills before the petition's priority date. In response to SCOPS' request for evidence and on appeal, the Petitioner's legal representative asserts that the statement on the Form ETA-9089, Part E.5, properly modifies the minimum requirements as listed on the PWD, and such modification is permissible by the DOL. Counsel states, "Although the Emulation Skill requirement was initially included at the Prevailing Wage stage, the skill was removed prior to labor market testing as the Petitioner confirmed it is not a requirement for the role … As indicated [on the labor certification], *Emulation Skills* was not tested for in the labor market, does not affect the prevailing wage, and did not disqualify any U.S. applicants as it is not required for the role."

The record, however, lacks corroborating documentary evidence that the relevant advertisements and recruitment materials for the offered job omitted the need for Emulation Skills as claimed. We will therefore remand the matter for further consideration. On remand, SCOPS should request the Petitioner to submit copies of the specific ads and recruitment materials underlying this labor certification in order to determine if the skill was omitted as claimed.

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