U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 35278865

Date: NOV. 05, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a provider of janitorial services, seeks to employ the Beneficiary as an assistant manager. It requests his classification as a skilled worker under the third-preference, immigrant visa immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(1), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

Service Center Operations (SCOPS) initially approved the petition in July 2012 but revoked the approval on notice on May 12, 2017. We dismissed the Petitioner's subsequent appeal of the revocation decision. On a motion to reconsider, we withdrew SCOPS' decision and remanded the matter for further review of additional potential grounds for revocation not raised in SCOPS' notice of intent to revoke (NOIR). After issuing a new NOIR and reviewing the Petitioner's response, SCOPS revoked the petition's approval, concluding the record did not establish that the Beneficiary met the requirements for the offered position as stated on the labor certification, and the Petitioner's ability to pay the proffered wage. SCOPS further determined the Petitioner willfully misrepresented a material fact by concealing a familial relationship between the Beneficiary and the Petitioner's owners, emphasizing that this familial relationship calls into question whether there was a bona fide job offer.[1] The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

In revocation proceedings, the Petitioner bears the burden of establishing eligibility for the requested benefit by a preponderance of evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon de novo review, we will dismiss the appeal.

## I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain U.S. Department of Labor (DOL) certification that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and an alien's permanent employment in the

[1] Additionally, although not addressed as a separate ground for denial, SCOPS questioned the Petitioner's intent to employ the Beneficiary at the worksite address listed on the labor certification.

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). 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)(l)(F) of the Act. Among other things, USCIS determines whether a beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(1)(3)(ii)(D), (4). 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(a) of the Act, 8 U.S.C. § 1255(a).

At any time before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 l&N Dec. 582, 590 (BIA 1988). USCIS properly issues a NOIR if the unrebutted and unexplained record would have warranted the petition's denial. *Matter of Estime*, 19 l&N Dec. 450, 451 (BIA 1987). USCIS properly revokes a petition's approval if a petitioner does not respond to a properly issued NOIR, or their NOIR response does not overcome all alleged revocation grounds. *Id.* at 451-52.

## II. ANALYSIS

### A. Experience Required for the Offered Position

A petitioner must demonstrate a beneficiary's qualifications for 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 April 7, 2011, 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 job's minimum requirements. USCIS may neither ignore a term on the labor certification 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 of setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification states the minimum requirements of the offered position of assistant manager as two years of experience "in the job offered." The labor certification does not allow for experience in any alternate occupation. The certification states that the position requires neither education nor training.

On a labor certification application, the phrase "in the job offered" means experience performing the key duties of the offered position as stated on the application.[2] *See, e.g., Matter of Symbioun Techs., Inc.*, 2010-PER-01422, *3 (BALCA Oct. 24, 2011). The Petitioner's application states the key duties

[2] On the labor certification and on the Form I-140, Immigrant Petition for Alien Workers, the Petitioner indicated that the offered position falls under the DOL's Standard Occupational Classification (SOC) code 37-1011, "First-line supervisors of Housekeeping and Janitorial Workers." *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *2010 Standard Occupational Classification System*, Building and Grounds Cleaning and Maintenance Occupations, https://www.bls.gov/soc/2010/2010_major_groups.htm#37-0000.

of the offered position as: overseeing and coordinating activities of janitorial employees; training new employees; ordering and issuing supplies; maintaining equipment inventory; managing projects and ensuring their completion; scheduling workloads; ensuring maintenance of equipment and cleanliness standards; and substituting in for employees as needed. The Petitioner indicated on the labor certification that it will not accept experience in an alternate occupation.

As proof of qualifying experience, a petitioner must submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(1)(3)(ii)(A). The letter must include the employer's name, title, and address, and describe the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the [noncitizen]'s experience ... will be considered." 8 C.F.R. § 204.5(g)(1).

On the labor certification, the Beneficiary attested that he worked as an assistant manager for a South Korean communications services company from February 2003 to February 2007. The Petitioner submitted a letter from this South Korean company as proof of his claimed experience. This "Employment Certification," dated August 16, 2010, states the company employed the Beneficiary as a "Department Chief (Assistant Manager)" for the claimed four-year period. The certification notes his "affiliation" with the company's "Takeoff Technical Consulting Team for Oversee Business."

However, contrary to the requirements at 8 C.F.R. § 204.5(l)(3)(ii)(A), the submitted employment certification lacked a sufficient "description of the . . . experience of the alien." *See also* 8 C.F.R. § 204.5(g)(1) (stating that experience letters from former employers "shall include a specific description of the duties performed"). The certification from the Beneficiary's former employer did not state his job duties as required by the regulation and therefore did not demonstrate his experience in the position offered as stated on the labor certification. Further, the employment certification's accompanying English translation did not comply with the requirements of 8 C.F.R. § 103.2(b)(3). Because SCOPS did not notify the Petitioner of these evidentiary deficiencies in the NOIR or notice of revocation, we remanded the matter to SCOPS for the issuance of a new NOIR.

In response to the NOIR issued by SCOPS on remand, the Petitioner resubmitted a copy of the same August 2010 employment certification with a new English translation. However, it did not provide any additional documentation related to the Beneficiary's claimed experience with the South Korean employer.

SCOPS revoked the approval of the petition, in part, because the Petitioner did not provide an employment certification from his former employer that included "a description . . . of the experience of the alien," as required by 8 C.F.R. § 204.5(l)(3)(ii)(A). SCOPS concluded the Petitioner did not meet its burden to demonstrate that the Beneficiary met the minimum requirements for the offered position as listed on the labor certification and therefore found him ineligible for classification as a skilled worker.

On appeal, the Petitioner asserts that it has "subsequently provided an updated experience letter signed by the employer . . . to include specific duties the Beneficiary performed" in support of a second Form I-140 it filed on the Beneficiary's behalf, noting that USCIS approved that petition.

In support of the appeal, the Petitioner provides a copy of a "Certificate of Experience," with certified English translation, dated May 29, 2024. This certificate from the Beneficiary's claimed former South

Korean employer states he held the position of "manager" between February 2003 and February 2007, and summarizes his responsibilities as follows: "[o]verseas business technical support, service launch project planning and support, on-site staff technical training and planning."

We conclude the Petitioner has not established that the Beneficiary met the DOL-certified requirements for the proffered position of assistant manager.

The Petitioner was put on notice of the deficiencies in the previously provided employment certificate in our remand decision issued in July 2022, and in SCOPS' second NOIR issued April 5, 2024. It does not dispute that it did not submit an employment certificate containing the information required by 8 C.F.R. § 204.5(l)(3)(ii)(A) in response to the NOIR; rather it maintains that it submitted the new employment certificate from the Beneficiary's claimed former employer at a later date and in support of a different immigrant petition that was accompanied by a different labor certification.

Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence prior to issuance of the notice of revocation, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (*citing Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that all requested evidence be submitted together at one time).

Nevertheless, even if we were to consider this new evidence, the brief description of responsibilities provided in the South Korean company's updated certificate of experience does not indicate that the Beneficiary has experience performing the key duties of the offered position as stated on the labor certification. The evidence does not demonstrate that the Beneficiary's position with the South Korean communications company would reasonably fall under the SOC code for "first-line supervisors of housekeeping and janitorial workers" provided on the labor certification. The Petitioner did not indicate that it would accept experience in an alternate occupation.[3] The record, including the new evidence provided for the first time on appeal, does not establish the Beneficiary's experience "in the job offered."

Accordingly, for the reasons discussed, we will affirm SCOPS' decision to revoke the petition's approval.

B. Non-Disclosure of a Familial Relationship

The next issue before us is whether SCOPS properly revoked the approval based on the Petitioner's non-disclosure of a familial relationship between the Beneficiary and the Petitioner's shareholders on the accompanying labor certification. The record indicates that the Beneficiary's father and brother own the petitioning company. On the labor certification and Form I-140, the Petitioner states it has 20 employees.

[3] The Petitioner emphasizes that USCIS approved a subsequent immigrant petition it filed on the Beneficiary's behalf that included the same May 2024 employment certificate from his claimed South Korean employer. The record reflects that the subsequent petition was accompanied by a different labor certification on which the Petitioner indicated at part H.10 that experience in an alternate occupation is acceptable.

Under its statutory authority, USCIS must examine the merits of a petition filed by an employer "desiring and intending to employ" a foreign worker under the employment-based preference categories that require a labor certification. *See* section 204(a)(1)(F) of the Act. 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* sections 203(b)(3)(C) and 204(b) of the Act; 8 C.F.R. §§ 204.5(a)(2), 204.5(k)(4)(i) and (l)(3)(i).

USCIS is only required to approve those petitions where it is determined the facts stated in the petition and labor certification are true. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The labor certification is incorporated into the I-140 petition pursuant to 8 C.F.R. § 103.2(b)(1) which states that "[a]ny evidence submitted in connection with a benefit request is incorporated into and considered part of the request." On the labor certification, employers must attest that "[t]he job opportunity has been and is clearly open to any U.S. worker." 20 C.F.R. § 656.10(c)(8). "This provision infuses the recruitment process with the requirement of a *bona fide* job opportunity: not merely a test of the job market." *Matter of Modular Container Sys., Inc.*, 89-INA-228, 1991 WL 223955, *7 (BALCA July 16, 1991) *(en banc)* (referring to the former, identical regulation at 20 C.F.R. § 656.20(c)(8)). A relationship invalidating a bona fide job offer may arise where the beneficiary has an ownership interest in the petitioner or is related to the petitioner's owners or officers by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Summart* 374, 00-INA-93 (BALCA May 15, 2000). While such relationships do not result in an automatic disqualification, if the alien beneficiary's true relationship to the petitioning business is not apparent in the labor certification proceedings, it causes the certifying officer to fail to examine more carefully whether the position was clearly open to qualified U.S. workers and whether U.S. workers were rejected solely for lawful job-related reasons. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986),

In this case, the labor certification was submitted along with the Form I-140 as supporting evidence and thus is incorporated into the I-140 submission before USCIS. The Petitioner also signed Part 8 of the Form I-140, which states in part, "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." As such, the Petitioner certified that the Form I-140, and its underlying evidence, including the required labor certification, were true and correct.

The attestations on the Form I-140 and the incorporation of the labor certification as supporting evidence in support of the immigrant petition, render any misstatements or misrepresentations on the labor certification material to the Form I-140 adjudication. Accordingly, USCIS cannot approve a petition if the facts stated on an accompanying labor certification are untrue.

Part C.9 of the labor certification in the record asked the Petitioner: "[I]s there a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators, and the alien?" The response to this question is checked "No." By signing the employer declaration at Part N, the company's authorized signatory took full responsibility for the accuracy of any representations made

by the company or its attorney. He also declared under penalty of perjury that he reviewed the application, and the information contained therein was true and accurate to the best of his knowledge.

However, the Petitioner has consistently claimed, since responding to SCOPS' first NOIR issued in 2017, that it did in fact disclose the familial relationship on the labor certification application it filed by mail with DOL. The Petitioner submitted a copy of the labor certification form it purportedly mailed to the DOL in 2011, indicating "Yes" at part C.9.[4] It also provided a copy of a March 2017 letter that its counsel claimed to have sent to the DOL in 2017, asking DOL to confirm the Petitioner's disclosure of the family relationship on the application form.

When the DOL receives a labor certification application by mail, agency employees enter data from the filing into the DOL's online system. *See, e.g., Matter of Youth Soccer All., LLC*, 2011-PER-01349, 2012 WL 4339020 *1 (BALCA Sept. 18, 2012). In *Youth Soccer*, the Board of Alien Labor Certification Appeals (BALCA) reversed a certification denial where the DOL mistakenly omitted information in a mailed-in application from the online system. 2012 WL 4339020 at *3. The discrepancy between the date on the mailed application and the information entered online was clear because BALCA's record contained both forms: the one mailed to the DOL and the online version the DOL created. *Id.*

Here, our record contains the online form the DOL created and certified, but not the form the Petitioner claims it mailed to the agency. The Petitioner has not established the authenticity of its copy of the purported mailed-in application. At the time it responded to SCOPS' NOIR in March 2017, the Petitioner stated that it would notify USCIS once the DOL responded to its inquiry letter. To date, the Petitioner has not provided any evidence of further communication with DOL regarding this issue. Further, the record lacks documentary evidence of the application's mailing and receipt on the designated dates, or other evidence, such as affidavits from the Petitioner and counsel regarding the filing's preparation, signing, copying, and submission.

Also, counsel and the Petitioner's representative signed the online form after its certification, attesting under penalty of perjury to their review of the form and to the truth and accuracy of the data in it. By signing the labor certification, the Petitioner's authorized signatory created a "strong presumption" that he knew the application's contents and assented to them. *See Matter of Gonzalez Jimenez*, 29 I&N Dec. at 133. The Petitioner has previously conceded that it erred by not attempting to have its response to part C.9 of the labor certification corrected prior to signing it and submitting it to USCIS. However, it maintains, as it did in response to the NOIR, that its failure to notice or correct the response to part C.9 was merely an oversight, and not a willful concealment of the true facts.

SCOPS correctly determined that the labor certification failed to disclose the family relationship between the Petitioner's owners and the Beneficiary, and as a result, misstates a fact bearing on a statutory labor certification requirement. Under section 204(b) of the Act, SCOPS properly revoked the approval of the petition because the information provided at part C.9 of the labor certification was not true.

[4] The DOL encourages online filing of labor certification applications but also accepts them by mail. If mailed, an application must contain original signatures of the employer, the alien, and the application's preparer (if different than the employer). 20 C.F.R. § 656.17(a).

C. Willful Misrepresentation of a Material Fact

The remaining issue we will address is whether SCOPS properly determined that the Petitioner willfully misrepresented a material fact by concealing the familial relationship between the Beneficiary and the company's owners. On appeal, the Petitioner maintains that the false "No" response at part C.9 of the labor certification was neither material nor willfully made.

For an immigration officer to find a willful and material misrepresentation of fact, they must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government in procuring or seeking to procure a benefit under U.S. immigration laws, (2) the false representation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-,* 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of Valdez*, 27 I&N Dec. 596, 598 (BIA 2018) (citations omitted). A misrepresentation is material if it has a "natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Id.*

The Petitioner attributes its false "no" response at part C.9 of the labor certification to an error that allegedly occurred when a DOL employee entered data from its mailed application into the DOL's online system. The Petitioner has not demonstrated the authenticity of the submitted "file copy" of the mailed application. Regardless, as noted, the Petitioner's authorized representative, by signing the employer declaration at part N of the labor certification, took full responsibility for the accuracy of the information on the labor certification, and declared under penalty of perjury that he read and reviewed the application and that, to the best of his knowledge, the information contained therein was true and accurate. The Petitioner's signature "establishes a strong presumption" that they knew and assented to the form's contents. *See Valdez*, 27 I&N Dec. at 499.

The Petitioner also signed the Form I-140, certifying under penalty of perjury that the petition and the evidence submitted with it were true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). The Petitioner took legal responsibility for the truth and accuracy of any evidence submitted in support of the petition, including the labor certification. Based on the Petitioner's declarations on the labor certification and Form I-140, we agree with SCOPS' determination that the misrepresentation was willfully made.

The Petitioner further maintains that the misrepresentation was not material, explaining that the disclosure of the familial relationship would not have changed the result because the persons who applied for the position during the recruitment process were rejected for lawful, job-related reasons. The Petitioner emphasizes that DOL certified its application in December 2011 after conducting a recruitment audit.

However, a material misrepresentation is also one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). Disclosure of the familial relationship in this case would have required DOL to examine the bona fide nature of the job offer under 20 C.F.R. § 656.17(1), an inquiry that goes beyond reviewing the results of a petitioning employer's recruitment efforts alone.

Here, DOL did not have an opportunity to determine the position's availability to U.S. workers under the true, relevant facts. The record indicates that DOL did not know of 20 C.F.R. § 656.17(l)'s applicability to the Petitioner's filing and the potential effect of the concealed family relationship on the bona fides of the job opportunity. The Petitioner has not substantiated its claim that DOL's approval of its labor certification application was the only possible result and that its misrepresentation at part C.9 of the application was therefore immaterial. The Petitioner's misrepresentation effectively shut off DOL's inquiry into the bona fide nature of the job offer.

The Petitioner's claims on appeal do not overcome SCOPS' conclusion that it willfully misrepresented material facts related to the familial relationship between the Beneficiary and the company's owners.

D. Reserved Issues

Because the Petitioner has not established eligibility for the immigrant visa classification sought, we need not reach, and therefore reserve, SCOPS' conclusions that the Petitioner did not demonstrate the offered position's availability to U.S. workers, its ability to pay the proffered wage and its intent to employ the Beneficiary at the worksite listed on the labor certification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

## III. CONCLUSION

For the reasons discussed, we affirm SCOPS' decision to revoke the petition's approval. The appeal will be dismissed for the above-stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.