U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36605517

Date: SEP. 10, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a gymnastics training facility, seeks to permanently employ the Beneficiary as a rhythmic gymnastics coach. It requests her classification under the employment-based, third-preference (EB-3) immigrant visa category as an "other worker." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). A U.S. employer may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring less than two years' training or experience. *See* 8 C.F.R. § 204.5(l)(2) (defining the term "other worker").

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary meets the educational requirement stated on the accompanying labor certification from the U.S. Department of Labor (DOL). On appeal, the Petitioner asserts that it made a harmless typographical error on the labor certification. It contends that SCOPS erred by not considering the labor certification in its entirety or the Petitioner's "underlying intent" in drafting the minimum requirements for the offered job.

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). 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 conclude that the Petitioner has not established its claimed intent to accept a foreign high school diploma for the offered job. We will therefore dismiss the appeal.

I. LAW

Immigration as an "other worker" generally follows a three-step process. First, a prospective employer must apply to DOL for certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the employment of an alien in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* 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). *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). USCIS determines, among other things, whether the beneficiary of the petition meets

the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(ii)(D).

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)(1) of the Act, 8 U.S.C. § 1255(a)(1).

II. ANALYSIS

A petitioner seeking to classify an alien as an "other worker" must demonstrate that the beneficiary met all DOL-certified job requirements on an accompanying labor certification, including any educational, training and experience, and other requirements, by the petition's priority date. *See* 8 C.F.R. § 204.5(l)(3)(ii)(D); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). This petition's priority date is August 24, 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 accompanying labor certification to determine the offered job's minimum requirements. The Agency may neither ignore a certification term nor impose unstated requirements. *E.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the burden of setting the *content* of the labor certification") (emphasis in original).

The Petitioner's labor certification lists the minimum requirements for the offered job of rhythmic gymnastics coach as a U.S. high school diploma with no training or experience required. Question H.9 of the labor certification application asks the employer: "Is a foreign educational equivalent acceptable?" In response to this question, the Petitioner checked the box marked "No." Question H.14 of the labor certification application allows the employer to describe "specific skills or other requirements" for the offered job. In this space, the Petitioner responded: "Requires a High School Diploma/GED or equivalent." The Petitioner's initial evidence included a copy of the Beneficiary's Ukrainian certificate of high school completion, with English translation, awarded in 2012.

SCOPS issued a request for evidence (RFE) acknowledging the Petitioner's responses at Questions H.9 and H.14 of the labor certification, along with its submission of the Beneficiary's foreign educational credential. But the RFE notes that the Petitioner's response to section H.9 on the labor certification application excludes a foreign high school equivalency as an acceptable educational credential for the offered job. SCOPS therefore requested evidence that the Beneficiary met the U.S. high school diploma education requirement as of the priority date.

The Petitioner's RFE response included an independent, professional evaluation equating the Beneficiary's foreign educational credential to a U.S. high school diploma. The Petitioner claimed that this evidence demonstrates the Beneficiary meets the educational requirement for the offered job, emphasizing that the labor certification indicates that a "High School Diploma/GED or equivalent" is acceptable.

The Petitioner also explained its responses to Questions H.9 and H.14 on the labor certification as follows:

> Acceptance of a foreign educational equivalent in Part H.9 of an ETA Form 9089 simply indicates an employer's willingness to accept a foreign degree equivalent, issued by a foreign school. It does not express, state, or define an employer's willingness to accept an educational program evaluated to be equivalent to a United States High School Diploma. Rather the ETA Form 9089 allows a petitioner to specify its exact requirements in Part H.14, Specific Skills or requirements. . . . [T]he labor certification specifies in Part H.14 that the position requires a "High School Diploma/GED ***or equivalent***."

This explanation suggests that the Petitioner intentionally marked "No" in response to the question "Is a foreign educational equivalent acceptable?" at part H.9 because it would only be willing to accept a foreign educational credential if it were "*evaluated* to be equivalent" to a U.S. high school diploma by an independent professional evaluator. In other words, the Petitioner claimed that it perceived a distinction between accepting a credential that is the "foreign educational equivalent" of a U.S. high school diploma, as described at section H.9 of the labor certification, and accepting a foreign high school credential that has been "evaluated to be equivalent" to a U.S. high school diploma. However, the Petitioner did not make this distinction or include this level of specificity when stating its "exact requirements" at section H.14. In addition, as discussed further below, the Petitioner claims on appeal that its "No" response to section H.9 was the result of a typographical error.

SCOPS denied the petition, concluding the Beneficiary does not qualify for the position because she did not have a U.S. high school diploma as of the priority date. SCOPS' decision acknowledges the Petitioner's RFE response quoted above but observed that information provided in response to Question H.14 can supplement or explain the minimum requirements of the labor certification, but it cannot contradict those requirements. SCOPS emphasizes that "Section H.9 states in plain language 'Is a foreign educational equivalent acceptable?'" It concluded that because the Petitioner marked "No" in section H.9, USCIS cannot accept the Beneficiary's foreign high school credential as evidence that she meets the education requirement for the offered job.

On appeal, the Petitioner maintains the Beneficiary qualifies for the offered job because "she holds the foreign equivalent of a U.S. high school diploma which is the only education requirement outlined in the certified Form 9089." It contends that "even though question H.9 incorrectly states that a foreign educational equivalent will not be accepted, in its analysis, USCIS failed to consider Petitioner's response to question H.14 which states the offered job "Requires a High School Diploma/GED or equivalent." The Petitioner argues that the information provided at Question H.14 clarifies that the company "would in fact accept the foreign equivalent of a U.S. high school diploma or GED." It provides a definition of "equivalent" in support of its assertion that "in this context, the word 'equivalent refers to a foreign high school diploma as long as it is equal in value, effect and significance to a U.S. high school diploma or GED."

We agree with the Petitioner's contention that USCIS, in determining the offered job's requirements, should consider the labor certification as a whole. *See Matter of Credent Techs. LLC*, 2014-PER-00065, *7 (BALCA Feb. 27, 2018) (reading a labor certification application form in its entirety to

determine that an employer misinterpreted Question H.10 as applying to the offered job's alternate requirements). The Petitioner's response to Question H.9 of the labor certification indicates that the company will not accept a foreign high school diploma to meet the job's educational requirement. But in Section J. of the certification, "Alien Information," the Beneficiary – whom the company selected to fill the offered job – attested to her receipt of a foreign high school diploma. Thus, the labor certification indicated that the response to Question H.9 may have mistakenly indicated the job's requirement of a U.S. high school diploma.[1] However, while the Petitioner's response at section H.14 indicates it will accept an "equivalent" of a U.S. high school diploma or GED but does not specify what it considers to be "equivalent" or include any reference to a foreign educational credential.

Based on the labor certification's internal contradictions, we will consider the Petitioner's recruitment materials created during the labor certification process, which it provides in support of its appeal. The Petitioner contends that this additional evidence demonstrates its intent to accept a foreign equivalent high school diploma or GED and provides sufficient basis for withdrawing SCOPS' decision.

Copies of the advertisements and other recruitment materials for the job offered consistently state that the position requires a "HS Diploma/GED or equivalent." The recruitment materials do not specifically exclude holders of foreign high school diplomas. But neither do they specifically accept them. Further, while the Petitioner contends the education requirement stated at Question H.14 of the labor certification (which is the education requirement stated in the recruitment materials) served as a "correction" of its "No" response to the question posed at section H.9, it did not use the word "foreign" when specifying that it would accept the "equivalent" of a U.S. high school diploma or GED. Thus, a preponderance of the evidence does not demonstrate the Petitioner's intent to accept foreign high school diplomas to meet the offered job's educational requirement.

In addition, the Petitioner emphasizes that its recruitment report demonstrates that no applicants responded to its recruitment efforts, no U.S. workers were harmed during the process, and the case "does not run afoul of the purpose of the PERM labor certification program." While the record supports the Petitioner's claim that no one applied for the position during the recruitment period, this fact does not have a bearing on our determination of the position's minimum requirements as stated in the labor certification or on the Petitioner's burden to demonstrate that the Beneficiary satisfied those requirements as of the priority date.

Finally, the Petitioner, citing a Board of Alien Labor Certification Appeals (BALCA) decision, describes its response to Question H.9 on the labor certification as a "harmless" typographical error. *See Matter of Anadigics, Inc.*, 2012-PER-02448, (BALCA Jan. 19, 2017). We need not follow BALCA decisions, however. *See* 8 C.F.R. § 103.10(b) (requiring USCIS to follow precedent decisions of the Board of Immigration Appeals (BIA) and the Attorney General in proceedings involving the same issues). Regardless, the Petitioner's claimed error in this matter alters the petition's outcome. Because the Beneficiary has a foreign high school diploma, the Petitioner's acceptance or non-acceptance of foreign educational credentials determines the Beneficiary's qualifications for the offered job. The claimed error is therefore not harmless.

[1] While the Petitioner now claims that its "No" response at Question H.9 was clearly a typographical error, its letter in response to SCOPS' RFE suggested that it intentionally marked "No" in response to section H.9 based on its interpretation of the question.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not demonstrated its claimed intent to accept a foreign high school diploma to meet the offered job's educational requirement. Because the Petitioner has not shown that the Beneficiary met all DOL-certified job requirements on the accompanying labor certification, by the petition's priority date, it did not establish that she is eligible for the requested EB-3 classification.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.