U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39300439

Date: SEP. 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a specialist recruitment firm, seeks to employ the Beneficiary as a vice president. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status. *Id.*

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Beneficiary possessed the minimum education required for the offered position or that a bona fide job offer open to U.S. workers exists. 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 dismiss the appeal because the petition cannot be approved, as the labor certification does not support the classification of professional.

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 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.

The regulation at 8 C.F.R. § 204.5(l)(2) defines "professional" as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree."[1] A petition seeking professional classification, therefore, must be accompanied by a labor certification that requires the minimum of a baccalaureate degree to qualify for the proffered position. 8 C.F.R. § 204.5(l)(3)(i). A beneficiary must meet all of the education, training, experience, and other requirements of the labor certification as of the petition's priority date,[2] which in this case is February 21, 2023. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In order to determine what a job opportunity requires, we must examine "the language of the labor certification job requirements." *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine the certified job offer exactly as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984). Our interpretation of the job's requirements must involve reading and applying the plain language of the labor certification application. *Id.* at 834. Moreover, we read the labor certification as a whole to determine its requirements. "The Form ETA 9089 is a legal document and as such the document must be considered in its entirety." *Matter of Symbioun Techs., Inc.*, 2010-PER-10422, 2011 WL 5126284 (BALCA Oct. 24, 2011) (finding that a "comprehensive reading of all of Section H" of the labor certification clarified an employer's minimum job requirements).

In this case, section H of the labor certification states the following with respect to the requirements for the proffered position of vice president:

H.4	Education: Minimum level required:	Bachelor's Degree
H.4-B	Major Field of Study:	Bus Admin/Mgmt, Mgmt Info Sys, Accounting/Finance or related field
H.5	Is training required for the job?	No
H.6	Is experience in the job offered required?	Yes
H.6-A	How long?	24 months
H.7	Is an alternate field of study acceptable?	No
H.8	Is an alternate combination of education and experience acceptable?	Yes
H.8-A	Specify the alternate level of education required:	None
H.8-C	Indicate the number of years experience acceptable:	4 years
H.9	Is a foreign educational equivalent acceptable?	Yes

[1] 8 C.F.R. § 204.5(l)(2) defines "skilled worker" as an alien who is capable of "performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States."

[2] The priority date of a petition is ordinarily the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).

H.10	Is experience in an alternate occupation acceptable?	Yes
H.10-A	Number of months experience:	24 months
H.10-B	Job title of the acceptable alternate occupation:	Regional Dir/Mgr, Business Director or Sr. Bus. Mgr in recruitment/placement svcs industry

H.14 Specific skills or other requirements:

1. Must include 2 years of experience with the following: Supervision/management of recruitment staff/teams; Development and implementation of growth strategies for recruitment service activities across multiple specialized industries; Use of management information systems to optimize business performance.
2. Good oral and written communication skills.
3. Requires up to 10% travel to regional offices across U.S. (Travel Requirement noted in all recruitment efforts.)

According to its plain language, the labor certification's alternate minimum educational requirement is none. The record includes copies of the Petitioner's recruitment efforts for the offered position. The Petitioner's advertisements and postings for the offered position state, "If no degree, will accept 4 years of experience in the job offer or as a Regional Director/Manager, Business Director or Senior Business Manager in the professional recruitment/placement services industry." The Petitioner's ads clearly reflect the alternate minimum education of "no degree."

The petition must be denied because it does not qualify for the requested classification. On Part.2.1.e of the Form I-140, the Petitioner indicated that it was filing the petition for a professional (at a minimum, possessing a bachelor's degree or a foreign equivalent to a U.S. bachelor's degree). The ETA Form 9089 states that the Petitioner will accept less than a bachelor's degree for the offered position. Since the labor certification allows an individual to qualify for the offered position with no education, the Beneficiary cannot be classified as a member of the professions holding a baccalaureate degree and the petition must be denied on this basis.

Accordingly, the labor certification does not support the petition's requested classification of professional, and the petition is not approvable. "If . . . the benefit request . . . does not demonstrate eligibility, USCIS . . . may deny the benefit request for . . . ineligibility." *See* 8 C.F.R. § 103.2(b)(8)(ii). Additionally, the USCIS Policy Manual notes that if a benefit request does not have a legal basis for approval, and additional evidence would not establish a legal basis for approval, a denial should be issued without first issuing a request for evidence or notice of intent to deny. 1 *USCIS Policy Manual* E.9(B)(1), https://www.uscis.gov/policymanual. Here, the alternate requirements on the labor certification do not meet the requirements for the professional classification. The Petitioner's advertisements confirm that no degree is required, and that the petition would not meet the requirements of the professional classification. Therefore, there is no legal basis for approval and no additional evidence would change this conclusion. Since the petition is not approvable, we will dismiss the Petitioner's appeal of SCOPS' decision.

Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining issues raised in SCOPS' decision. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.