U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33359409

Date: SEPT. 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a provider of healthcare technology services, seeks to permanently employ the Beneficiary as a senior software engineer. The company requests his 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 the Petitioner demonstrated neither the Beneficiary's qualifying education nor experience for the offered job. On appeal, the Petitioner contends that SCOPS misinterpreted the job's requirements and disregarded the company's arguments.

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 the Beneficiary's possession of a U.S. bachelor's degree equivalency meets the offered job's educational requirements. For a different reason than SCOPS found, however, the company has not established his qualifying experience. We will therefore withdraw SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Immigration as a skilled worker generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered job; and an alien's permanent employment in the 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)(1)(F) of the Act. Among other

things, USCIS determines whether an alien beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(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).

II. ANALYSIS

A. The Educational Requirements

A petitioner must demonstrate a beneficiary's possession of all DOL-certified job requirements 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 November 3, 2022, 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 a job's minimum requirements. The Agency may neither disregard a certification term nor impose unstated obligations. *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 educational requirements of the offered job of senior software engineer as a U.S. bachelor's degree, or a foreign equivalent degree, in computer science, management information systems (MIS), or an engineering discipline. Also, in response to Question H.14 of the labor certification "[s]pecific skills or other requirements," the company stated that it added language purportedly allowing for acceptance of a baccalaureate equivalency based in part on employment experience.

On the labor certification application, the Beneficiary attested that, by the petition's prior date, an Indian university awarded him a bachelor of computer applications degree. In the application section asking for information about his degree, the Beneficiary stated: "Three year degree. Evaluation of degree and subsequent 11 years' experience." The Petitioner submitted a copy of his 1999 university diploma and a 2012 independent, professional evaluation of his credentials. The evaluation concludes that his three-year bachelor's degree, combined with 11 of his years of employment experience, equates to a U.S. bachelor of science degree in MIS.

SCOPS interpreted the job to require a U.S. bachelor's degree or a foreign equivalent degree. SCOPS noted that, when asked at Question H.8 of the labor certification application whether the employer would accept "an alternate combination of education and experience," the Petitioner responded "No." SCOPS acknowledged the company's stated acceptance of an educational equivalency in response to Question H.14 of the application. But SCOPS concluded that the company did not demonstrate the Beneficiary's qualifying education for the offered job.

On appeal, the Petitioner contends that SCOPS misinterpreted the offered job's educational requirements. The company acknowledges the labor certification application's statement that the job

requires a U.S. bachelor's degree or a foreign equivalent degree. But the company argues that it "clarified" this requirement in its response to Question H.14.

The Beneficiary specifically listed, at Question J.15 of the labor certification, that he had a "[t]hree year degree. Evaluation of degree and subsequent 11 years' experience equals BS in MIS." Thus, considering the labor certification as a whole, including the responses to both Questions H.14 and J.15, the document sufficiently demonstrates the company's intent to accept a baccalaureate equivalency based on a combination of education and experience.

The evaluation submitted by the Petitioner demonstrates the Beneficiary's qualifying education. Thus, the company has established his satisfaction of the offered job's educational requirement. We will therefore withdraw SCOPS' contrary finding.

B. The Experience Requirements

The appeal demonstrates the Beneficiary's qualifying education for the offered job as of March 15, 2012, the education evaluation's date. But the Petitioner still has not established his qualifying experience.

The Petitioner's labor certification states the offered job's minimum experience requirements as five years "in the job offered." The Petitioner's response to Question H.14 on the certification also requires five years of:

- "progressively responsible, post-baccalaureate experience analyzing business problems and translating business requirements into technology solutions that consider system performance, usability, quality, cross-system interdependencies and scalability;"
- "experience designing enterprise class solutions using Microsoft Visual Studio, Microsoft.NET, C#, Microsoft Team Foundation Server, Microsoft SQL Server, ASP.NET, Angular JS, APIs and Microservices;" and
- "experience performing unit testing, application performance tuning and optimization, and static code analysis."

On the labor certification, the Beneficiary attested that, after March 15, 2012 and before the petition's priority date of November 3, 2022, he gained about nine years of full-time, qualifying experience. He stated the following employment:

- About six years, five months as a senior specialist – technology at a U.S. information technology (IT) consulting company, from October 2014 to March 2021; and
- About two years, seven months as an associate specialist – technology at the U.S. company's Indian parent, from March 2012 to October 2014.[1]

[1] The Beneficiary also stated the Petitioner's employment of him in the offered job since March 2021. A labor certification employer, however, cannot rely on experience that an alien gained with it, unless the alien gained the experience in a substantially different job than the one offered or the employer can demonstrate the impracticality of training a U.S. worker for the offered job. 20 C.F.R. § 656.17(i)(3). The Petitioner has neither demonstrated nor claimed its ability to rely on the Beneficiary's experience with it. We therefore do not consider the company's current employment of him as qualifying experience for the offered job.

To demonstrate qualifying experience, a petitioner must provide letters from a beneficiary's former employers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must include the employers' names, addresses, and titles, and descriptions of the beneficiary's experience. *Id.* "If such evidence is unavailable, other documentation relating to the [alien]'s experience . . . will be considered." 8 C.F.R. § 204.5(g)(1).

Based in part on its interpretation of the job's degree requirement, SCOPS found that the Petitioner did not demonstrate the Beneficiary's possession of the required experience. The company must demonstrate that the Beneficiary obtained at least five years of qualifying experience after March 15, 2012, and before the petition's November 2, 2022 priority date.

The Petitioner submitted a letter from the U.S. IT consulting company, confirming the Beneficiary's work for it and its Indian parent company from March 2012 to March 2021. The letter describes his experience. But it does not demonstrate his possession of all the skills required for the offered job. Contrary to the requirements listed in response to Question H.14 on the labor certification, the letter from the Beneficiary's former employer does not indicate his analysis of business problems or translation of business requirements into technology solutions considering "usability, quality, cross-system interdependencies and scalability."

SCOPS did not notify the Petitioner of this evidentiary defect in the Beneficiary's claimed qualifying experience. We will therefore remand the matter. On remand, SCOPS should notify the company of the deficiencies and afford it a reasonable opportunity to respond.

If supported by the record, SCOPS may notify the Petitioner of any additional potential denial grounds. SCOPS, however, must afford the company a reasonable opportunity to respond to all issues on remand. Upon receipt of a timely response, SCOPS should review the entire record and enter a new decision.

III. CONCLUSION

The Petitioner has demonstrated the Beneficiary's qualifying education for the offered job. The company, however, must submit additional evidence to establish his qualifying experience.

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

NOTICE: Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. *See* section 240 of the Act, 8 U.S.C. § 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for future U.S. visas or other immigration benefits.