In Re: 37893695 Date: APRIL 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a microbiologist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

## I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

*Id.*

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

## II. ANALYSIS

SCOPS determined the Petitioner qualified for EB-2 classification as an advanced degree professional because he submitted evidence he holds the equivalent of a U.S. Doctor of Veterinary Medicine degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

In his initial statement, the Petitioner describes his proposed endeavor as investigating "the genetic determinants of diseases, prevalence and identification methods of foodborne pathogens, and their genetic factors contributing to antimicrobial resistance to identify novel drug targets." The Petitioner states he will pursue his proposed endeavor while earning his doctoral degree from [redacted] where his work focuses "on identifying the prevalence of *Salmonella* and *Campylobacter spp.* in cattle reared in Alabama and investigating their pattern of antimicrobial resistance."

SCOPS determined the Petitioner established the substantial merit and national importance of his proposed endeavor, but did not meet the second and third *Dhanasar* prongs.

### A. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* SCOPS determined the Petitioner did not establish that he is well positioned to advance his proposed endeavor under these factors. On appeal, the Petitioner asserts SCOPS improperly analyzed the evidence and imposed a heightened standard of proof.

The Petitioner claims his education, support letters, and publication and citation record show that he is well positioned to advance his proposed endeavor. We agree. The Petitioner holds a doctoral degree in veterinary medicine. Letters from professors and researchers W-A-[2], P-K-A-R-, I-N-S-, C-S-, S-J, A-P-A, and C-R-J- attest to the Petitioner's skills, knowledge, record of success in efforts related to his proposed endeavor, and the interest of other researchers in his proposed endeavor. As S-J- explains, the Petitioner's "studies of animal infections and their determinants are helping others in the field to monitor disease rates in livestock and to discern how they move from sheep and goats to humans. This knowledge is crucial for protecting food supplies and humans alike for better health and thriving animal markets."

The Petitioner also submitted evidence that he has published co-authored articles, the majority of which are first-authored, in peer-reviewed journals that were cited numerous times, the majority of which were by independent research teams. The record also shows that one of the Petitioner's articles is ranked among the top 10 percent of the most highly cited articles in molecular biology and genetics. The Petitioner's publication and citation record demonstrate both his record of success in efforts related to his proposed endeavor and the interest of other researchers in his proposed endeavor.

[2] We use initials to protect the privacy of the referenced individuals.

In his initial statement and his statement submitted in response to SCOPS' request for evidence (RFE), the Petitioner details his plan for future activities. In his RFE statement, the Petitioner describes how he will continue his research on "factors favoring interspecies pathogen transmissions (notably from animals to humans), and pathogen virulence (for example antimicrobial resistance for drug interventions)." The Petitioner explains that his previous research investigated "the disease burden of food pathogens in animals bound for human consumption," and his "current research goes a step further to not only determine the disease burden or prevalence but also to develop tools that aid in the rapid detection and elimination of these foodborne pathogens from the food chain." The Petitioner states he intends to continue publishing and presenting his research and that his recent research has been published in one article and another article is under review pending publication. The Petitioner has thus provided a sufficient plan for his future activities.

In sum, the record shows the Petitioner has the education, skills, and knowledge needed to advance his proposed endeavor, a record of success in efforts related to his proposed endeavor; a plan for future activities; has made progress towards achieving the proposed endeavor; and that other researchers are interested in the Petitioner's proposed endeavor. On appeal, the Petitioner has established that he is well positioned to advance his proposed endeavor.

B. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 891.

SCOPS determined the Petitioner did not meet this prong under these factors. On appeal, the Petitioner asserts SCOPS erred and he meets this prong because he has established the substantial merit and national importance of his proposed endeavor, that he is well positioned to advance his proposed endeavor and "that it would be beneficial to the United States to waive the job offer and labor certification requirements."

The Petitioner's education and proposed endeavor in a science, technology, engineering, and math (STEM) field merit special consideration under United States Citizenship and Immigration Services (USCIS) Policy. USCIS recognizes the importance of progress in STEM fields and the essential role that individuals with advanced STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. Accordingly, strong positive factors to consider when assessing the third *Dhanasar* prong include possession of an advanced STEM degree and being well positioned to advance the proposed STEM endeavor of national importance. *Id.* These factors are present in the Petitioner's case.

However, the Petitioner has not established his eligibility under the factors identified in *Dhanasar*. The Petitioner does not demonstrate that it would be impractical for him to secure a job offer or obtain a labor certification. The Petitioner also does not articulate how the United States would benefit from his contributions even if other qualified U.S. workers are available. While the Petitioner has established the national importance of his proposed endeavor, he has not shown that the national interest in his contributions is sufficiently urgent to warrant forgoing the labor certification process. Consequently, the Petitioner has not established that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

## III. CONCLUSION

The Petitioner has established that he is an advanced degree professional eligible for EB-2 classification, and that he meets the first and second *Dhanasar* prongs. The Petitioner has not demonstrated that he meets the third *Dhanasar* prong and merits a waiver of the job offer requirement in the national interest.

**ORDER:** The appeal is dismissed.