U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37759433

Date: APR. 22, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an electrical engineer, 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 Petitioner did not establish 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is an electrical engineer who proposes to open a specialized electrical engineering company which will provide comprehensive services that span all phases of project development; prioritizing modernization and sustainable solutions to clients. SCOPS determined that the Petitioner established eligibility for the EB-2 classification as a member of the professions holding an advanced degree. However, SCOPS concluded that the Petitioner did not establish eligibility for a national interest waiver, in pertinent part, because she did not establish her proposed endeavor is of national importance. On appeal, the Petitioner contends that the "decision provided a generic analysis and relied on unsupported assertions rather than conducting the thorough evaluation of the evidence submitted . . . ." We conclude the record does not establish the Petitioner's proposed endeavor is of national importance and therefore she is not eligible for a national interest waiver as a matter of discretion.

A. EB-2 Classification

SCOPS concluded that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. As stated above, a U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(K)(2). While both the Petitioner and SCOPS state that she earned a foreign degree in 2018; the diploma in the record establishes that the Petitioner obtained the degree "*titulo de Ingeniera Electrica*" in November 2019 in Paraguay. SCOPS did not discuss whether the Petitioner satisfied the requirement for five years of progressive experience. We note that the petition was filed on March 1, 2024, which is less than five years after her degree was earned in November 2019. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). Although the Petitioner did not have the required experience following her degree at the time this petition was filed; she has not established by a preponderance of the evidence that she is otherwise eligible for a national interest waiver as a matter of discretion. Therefore, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

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[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).

[2] *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).*

B. National Interest Wavier

1. Substantial Merit

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner states her proposed endeavor is own and operate her own business which will offer specialized engineering services tailored to meet the distinct needs of clients across various industries. Her services include project identification, site assessment, procurement management, detailed engineering design, and project oversight; with a focus on modernization and sustainability. The record contains a business plan as well as articles about the current state of the engineering industry and the importance of modernization and clean energy in the field. We conclude that the proposed endeavor has substantial merit.

2. National Importance

On appeal, the Petitioner contends that SCOPS's decision contained "several critical inconsistencies that directly undermine the fairness and accuracy of the adjudication process." The Petitioner highlights several instances where SCOPS describes the facts of the case incorrectly. For example, SCOPS refers to the Petitioner as "him" instead of "her" a few times in the decision; and SCOPS mistakenly refers to the Petitioner's endeavor as "nursing consulting services" in one instance instead of her correct proposed endeavor of electrical engineering. While we acknowledge the decision does contain inconsistencies, the claimed errors are, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). In a review of SCOPS's discussion on national importance; the decision addresses the Petitioner's correct proposed endeavor as an electrical engineering consultant and evaluates the proper documents including the business plan, letters of recommendation, the Petitioner's assertion of a shortage in the industry, and the importance of an endeavor in the STEM field. SCOPS determined the Petitioner's proposed endeavor does not rise to the level of national importance under the *Dhanasar* framework as the record does not establish a broader impact and we agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. SCOPS determined that the Petitioner did not establish her proposed endeavor would have a broader impact beyond her company and clients. The Petitioner contends on appeal that her proposed endeavor will have a broader impact because her proposed endeavor aligns with national priorities. To support this assertion, the Petitioner highlights reports from the International Energy Agency and the Department of Energy. She states that these reports "highlight the critical need for advancements in infrastructure and clean energy." While the reports may highlight the importance of the industry and a critical need for advancements, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on, "the specific endeavor that the foreign national proposes to undertake." *Id.* These reports show the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of these industries, working in an industry is insufficient to establish the national importance of the proposed endeavor.

Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. For example, the Petitioner submitted various articles such as, "One year into the [Bipartisan Infrastructure Law]: Catalyzing US investments in energy" and "Executive Summary-United States 2024- Analysis IEA." While this shows government efforts in support of clean energy, it does not establish the national importance of the Petitioner's specific proposed endeavor. Although the industry reports and articles provide good background information and establish the U.S. government's interest in industries related to the Petitioner's proposed endeavor; without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

In addition, the record contains articles such as, "Overcoming the Shortage of Engineers" and "Engineering Talent Shortage Now a Top Risk Factor"; along with articles such as "Foreign Born STEM Workers in the U.S." and "Immigration and Entrepreneurship in the U.S." A shortage of qualified professionals does not render the work of an individual nationally important under the *Dhanasar* decision. The U.S. Department of Labor, through the labor certification process, directly addresses such shortages of qualified workers. Additionally, we recognize the importance of the engineering field and the significant contributions from immigrants who have become successful entrepreneurs. However, working in the engineering field or starting an electrical engineering consulting business in a field with a shortage of workers is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or field, or a shortage of workers in a field, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. Although the record provides information on the importance of the industry and the services she plans to provide to her clients, it does not establish her proposed endeavor's broader impact as *Dhanasar* requires.

On appeal, the Petitioner contends that her proposed endeavor will benefit the United States through job creation, economic growth, and environmental benefits. The Petitioner states that her company will directly create 15 jobs and 31 indirect jobs by the end of its fifth year of operation. Additionally, she states that her company will contribute over $1.2 million in taxes within its first 5 years. *Dhanasar* states that an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *Id.* at 890. Here, the record does not establish her company's future staffing levels and business activity stands to provide substantial economic effects. Specifically, the record does not demonstrate the direct creation of 15 additional jobs in this sector or the above stated tax contributions generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework. In addition, there is insufficient information about the 31 indirect jobs. For example, the record includes information about how this number was calculated using a multiplier; but does not discuss how the Petitioner's proposed endeavor will create these jobs, what types of jobs will be created, or where they will be located. Furthermore, the record does not establish that the Petitioner will be creating jobs in areas that are economically depressed. The company will start in [redacted] Utah and intends to "target key metropolitan areas such as [redacted] as well as. . . high growth regions like [redacted] The record does not establish that she will be targeting areas that are economically depressed. Therefore, we conclude that the record does

not establish the staffing levels, business activity, or location of the company stand to provide the economic impact *Dhanasar* requires.

Further, the Petitioner states that her proposed endeavor will have environmental benefits as her company will provide "innovative, sustainable, and cost-effective engineering solutions." *Dhanasar* held that an undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Matter of Dhanasar*, 26 I&N Dec. at 889. Beyond general assertions, the Petitioner has not demonstrated that the work she proposes to undertake as the owner of an electrical engineering consulting business offers specific innovations that contribute to advancements in her industry or otherwise have broader implications for her field. The economic and social welfare benefits that the Petitioner claims depend on numerous factors, and she did not offer a sufficiently direct evidentiary tie between her engineering work and the claimed potential benefits. The record does not show that the Petitioner has contributed to the innovation or advancement of the methods she plans to use, which may establish a broader impact on the industry. Without evidence of a broader impact, the record demonstrates that the impact of the Petitioner's proposed endeavor would be limited to her direct clients and would therefore not rise to the level of national importance. As discussed above, her company may have an impact on her direct clients, however that does not constitute national importance as set forth in the *Dhanasar* framework.

The Petitioner further asserts that SCOPS did not properly weigh the expert opinion letter and letters of recommendation in the record, as she states the letters highlight how her "expertise in automation and sustainable engineering aligns with federal priorities and contributes to economic growth, environmental sustainability, and energy efficiency." While we acknowledge the Petitioner's experience in the engineering field, her past experience does not establish national importance under the *Dhanasar* framework. Past experience can be persuasive for prong two analysis, whether the Petitioner is well-positioned to advance the proposed endeavor, however, it does not establish the national importance of the proposed endeavor as it does not speak to the prospective impact of the proposed endeavor. The letters of recommendation highlight each author's experience working with the Petitioner and how they value her work and expertise, but the letters do not further establish the national importance of her proposed endeavor. Where the authors do discuss her business plan, they reiterate many of the same claims the Petitioner makes herself; which we addressed above. The expert opinion letter also reiterates many of the same claims the Petitioner made regarding her proposed endeavor such as her priority for modernization and sustainability, her claimed economic impact, and her alignment with government initiatives. Although there is merit to her endeavor, the record does not establish that her proposed endeavor will impact the industry more broadly to impact more than her prospective clients.

Additionally, we note that the Petitioner plans to train new professionals as part of her proposed endeavor through "transmission of knowledge." In *Dhanasar*, we determined that the Petitioner's teaching activities did not rise to the level of national importance because they would not impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here too, her company may have an impact on her employees and clients, however, this does not constitute national importance as set forth in the *Dhanasar* framework. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national

interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.