U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37408870

Date: APR. 22, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a product development manager and an entrepreneur, 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

SCOPS denied the petition, concluding that the Petitioner qualified for the EB-2 classification, but that he had not established 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. 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.

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.

[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).

Id.

SCOPS found the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. SCOPS also determined that the Petitioner's proposed endeavor of working as an entrepreneur has substantial merit. SCOPS concluded, however, that the Petitioner failed to demonstrate the proposed endeavor's national importance, that he is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner contends that SCOPS "missed the evidence." He argues that his entrepreneurial endeavor to "deploy a new technology" is "novel and unique" and "carries risk of failure." The record includes news articles, Google Analytics report, business account statement, and a response to Petitioner's email inquiry to post on the Journal of Cartography about his [redacted] application.

As a preliminary matter, it is important to note that the Petitioner originally described his proposed endeavor as one that will involve him working as a product development manager. In his cover letter, the Petitioner indicated that his primary occupation was to "seek and lead financial product development initiatives that are focused towards debt management and debt reduction." He explained that he will foster partnerships between credit card issuers and small to medium-sized banks while leading the creation of new financial products such as low-interest-rate credits cards to help U.S. consumers manage their debt effectively. The Petitioner also mentioned that in addition to his primary proposed endeavor, he intended to "continue and [expand] his work on developing new, innovative [redacted] technology." SCOPS issued a request for evidence (RFE) asking for a "specific and well-detailed description" of the proposed endeavor and its nature. In response to SCOPS' RFE, the Petitioner provided additional information about the "indoor navigation technology" he has developed and intends to deploy at various locations in the United States. However, the Petitioner did not offer further clarification or details about the primary endeavor that he initially outlined.

On appeal, the Petitioner once again solely focuses on the [redacted] technology endeavor, asserting that the "technology advances the broader industry." However, the Petitioner does not mention the primary endeavor he originally proposed. A petitioner must identify the specific endeavor they propose to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. The *Dhanasar* framework cannot be applied to two dueling proposed endeavors. Moreover, the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Here, it is unclear what endeavor the Petitioner proposes to undertake in the United States. The absence of a clearly defined proposed endeavor prevents us from meaningfully assessing the endeavor's significance under the *Dhanasar* framework. Furthermore, because the Petitioner largely abandoned his initial proposed endeavor after receiving SCOPS' RFE, he did not present a fully developed petition.

While the Petitioner asserts that his [redacted] technology endeavor aligns with national interest, could create at least four jobs, and will enhance the productivity of U.S. businesses, he has not explained how this endeavor relates to the original proposed endeavor. It is also unclear how the Petitioner intends to divide his time between the two endeavors.

Similarly, we have insufficient information concerning the Petitioner's initial proposed endeavor with which to determine whether it has substantial merit because the Petitioner's proposed endeavor has

not been clearly defined. Again, the Petitioner abandoned the initially proposed endeavor after the RFE was issued and therefore never fully built out an I-140 petition based on it. Because we have so little information regarding that initially proposed endeavor, we cannot even analyze it under the *Dhanasar* framework, let alone determine whether it has substantial merit and national importance under *Dhanasar's* first prong. We, therefore, conclude that the Petitioner did not submit persuasive evidence to support a finding of substantial merit and national importance, and thus did not meet the first prong of the *Dhanasar* framework. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish his eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Here, the Petitioner's inconsistent presentation of his proposed endeavor undermines his eligibility for a national interest waiver.

Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.