U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37860206

Date: APR. 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner 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 the Petitioner had not established eligibility for the underlying immigrant classification and for 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 withdraw the SCOPS decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

Id.

II. ANALYSIS

In the record below, the Petitioner stated that his proposed endeavor "is to investigate and implement methods to improve the thermal performance and efficiency of industrial processes in order to enhance system efficiency and reduce energy consumption." After reviewing the initial evidence, SCOPS issued a request for evidence (RFE) and stated that the certification provided by the Petitioner regarding the translation of foreign language documents was insufficient. The RFE noted that USCIS requires that a translator must certify that the translations are accurate and complete, and that the translator is competent to translate from the foreign language into English. *See* 8 C.F.R. § 103.2(b)(3). We note that the original evidence included a statement from the Petitioner regarding his translation of foreign language documents which stated, "I, [Petitioner], hereby declare that I am fluent in English and Persian. I hereby certify that I have translated the attached documents and, to the best of my knowledge, they are a true, accurate and complete translation of the original text." The RFE only stated that "the translation certification provided by the [P]etioner does not meet the standards of USCIS," without specifically explaining why the Petitioner's statement was insufficient.

In response to the RFE, the Petitioner provided additional copies of translated documents certified by a third party, which SCOPS also deemed insufficient, and used this conclusion to disregard large amounts of evidence provided by the Petitioner, including his degree. The SCOPS decision further claimed that there were inconsistencies or discrepancies in the record as they related to the U.S. Department of Labor's Application for Permanent Employment Certification Form ETA-9089, Appendix A: Foreign Worker Information. SCOPS contended that as the Form ETA-9089 did not include the Petitioner's degrees that he obtained prior to his Ph.D., there were inconsistencies, and further that some prior employment entries did not explicitly match those found on the Petitioner's curriculum vitae (CV). However, it is unclear why SCOPS placed so much weight on the information found in both the Form ETA-9089 and the Petitioner's CV.

The SCOPS decision listed, in repeating detail, the evidence provided by the Petitioner in support of his petition, but then essentially disregarded it, and cited *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), stating that "doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of the visa petition." However, we disagree with SCOPS' conclusion that the inconsistencies noted in the Form ETA-9089 and CV are sufficient enough to warrant disregarding the record. Further, neither the RFE nor the ultimate decision provided an adequate explanation of why the Petitioner's certification of translation was

[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).

insufficient, by a preponderance of the evidence, when his certification stated both that he was fluent in English and Persian, and that the translations were true and accurate.

Remanding a matter is appropriate when decision does not fully explain the reasons for the denial so that the affected party has a fair opportunity to contest the decision and the AAO has an opportunity to conduct a meaningful appellate review. 8 C.F.R. § 103.3(a)(1)(i),(iii) (providing that the director's decision must explain the specific reasons for denial and notify the affected party of appeal rights); *cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The analysis in the SCOPS petition appears to go beyond the preponderance of the evidence standard in the assessment of the evidence provided, including the Petitioner's translation certification, and further, did not sufficiently explain the reasoning for disregarding large portions of the record. As such, we withdraw SCOPS' decision and remand the matter for the entry of a new decision.

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