U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37748968

Date: APR. 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner 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).

SCOPS denied the petition, concluding the Petitioner had not established eligibility 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 SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

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).

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner intends to "continue conducting research on the application of cutting-edge hydrocarbon prospecting techniques including analyz[ing] well logs, rock cuttings, core samples, and fluid data to deploy the petrophysical characterization of subsurface rock formations related to conventional/unconventional reservoirs." The Petitioner stated that his proposed endeavor "will provide technical assistance for optimizing oil and gas exploration and production."

In our review of the record, and as stated by the Petitioner on appeal, the SCOPS request for evidence (RFE), issued prior to the decision, indicated that he had "offered sufficient evidence to demonstrate that [his] proposed endeavor stands to impact the regional or national population at a level consistent with having national importance," and accordingly, he had met the first prong of the *Dhanasar* framework. However, in the decision, SCOPS appears to have rescinded that conclusion, and denied his petition, determining that "the record does not establish the national importance" of his proposed endeavor.[2] The record does not reflect that SCOPS informed the Petitioner of the change in their determination, either by additional RFE or by notice of intent to deny.

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). As the Petitioner was never provided an opportunity to address the concerns laid out by SCOPS in the final decision, we withdraw SCOPS' decision and remand the matter for the entry of a new decision.

ORDER: SCOPS' decision is withdrawn.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

[2] Although SCOPS also denied the petition for not establishing eligibility under the third prong of the *Dhanasar* framework, we will not address that portion of the decision, as the Petitioner has established error in the underlying decision.