U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42251009

Date: APR. 23, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an event planner and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 the Petitioner qualified for the EB-2 classification. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

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,[2] 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 order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. The Petitioner claimed that she qualifies for the EB-2 classification as an individual of exceptional ability. In denying the petition, SCOPS determined that the Petitioner did not establish that she qualifies as an individual of exceptional ability. Because she did not meet the requirements for EB-2 classification, SCOPS concluded that she is not eligible for a national interest waiver. SCOPS also cited 8 C.F.R. § 103.2(b)(8)(i), which states in pertinent part that "[i]f the record evidence establishes ineligibility, the benefit request will be denied on that basis."

On appeal, the Petitioner asserts that SCOPS' decision not to issue a request for evidence (RFE) or a notice of intent to deny (NOID) constitutes a breach of due process because she was not given an opportunity to respond to any deficiencies in the record.[3] However, SCOPS permissibly used its discretion of whether or not to issue an RFE or NOID based on its conclusions concerning the Petitioner's EB-2 eligibility.[4] Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE or a NOID, neither the Act nor the regulations compel us to do so.

Moreover, SCOPS' decision provided adequate notice regarding the deficiencies in the petition but the Petitioner does not address the bases of the denial on appeal. Instead, the Petitioner maintains that she qualifies as an individual of exception ability based on "documentation demonstrating her ongoing commitment to professional development and her established track record in the events and entrepreneurship sectors." She cites evidence previously provided, including courses she has taken, her membership in two events associations, her personal affidavits of her history of employment, and

[2] *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).

[3] The Petitioner also asserts on appeal that SCOPS applied a heightened evidentiary burden in concluding that her proposed endeavor did not meet any of the prongs described in *Matter of Dhanasar*. SCOPS' decision, however, did not evaluate the proposed endeavor.

[4] *See* 1 *USCIS Policy Manual at* E.6(F), https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6 (providing that USCIS has the discretion to deny a benefit request without issuing an RFE or NOID if the officer determines the benefit request does not have any legal basis for approval).

letters of support discussing her work. She does not, however, address specific conclusions reached by SCOPS concerning her ineligibility for the EB-2 classification.

An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). The reason for filing an appeal is to provide the affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact. Because the Petitioner has not sufficiently identified SCOPS' errors in evaluating the criteria under 8 C.F.R. § 204.5(k)(3)(ii), we must dismiss the appeal.

II. CONCLUSION

The Petitioner has not established qualification for the EB-2 visa classification, an underlying requirement to establish eligibility for a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.