U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37857496

Date: APR. 30, 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).

Service Center Operations (SCOPS) denied the petition, concluding that 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 sustain 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.

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

[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).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner provided copies of her academic records, copies of her degrees, and education evaluations, which resulted in SCOPS concluding that she had met the requirement of establishing that she is an advanced degree professional, and thus eligible for the underlying classification. 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 "design, synthesize, and develop drug nanocarriers as novel drug delivery systems for managing and treating metabolic and infectious diseases." The Petitioner stated that through her research, she would "help improve the efficacy of the drug at the disease's tumor cells or cellular reservoir sites."

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor.

A. National Importance of the Proposed Endeavor

On appeal, the Petitioner contends that she had provided sufficient evidence to establish the national importance of her proposed endeavor, and further, that the SCOPS decision erred when it stated that the Petitioner had "failed to explain in detail her design, methodology, techniques, and whether those are available in the United States," as this is not required in the *Dhanasar* framework nor by the USCIS Policy Manual. The Petitioner further notes that the SCOPS decision stated that she had not provided evidence that her proposed endeavor of any positive economic effects that would result from her endeavor, which is not specifically required, but as noted in *Dhanasar*, is one of a number of factors that may be used in establishing the national importance of a proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. We agree with the Petitioner's assertions.

The Petitioner, in her personal statement regarding her proposed endeavor, indicated her intent to "work as a Research Scientist (Postdoctoral Researcher) in the United States," and discussed her intended research topics, which include "the design, formulation, and evaluation" of nanoparticles that would target HIV and breast cancer. Her personal statement further discussed her research plans, techniques, methods, and goals. The Petitioner provided evidence in the form of articles from the National Institutes of Health and Center for Disease Control, among others, which discussed the importance of nanotechnology in various treatments. The Petitioner further notes that the evidence provided with her petition establishes that her proposed endeavor "advances formally recognized critical and emerging technologies that the federal government has listed as national priorities." As such, we withdraw the SCOPS conclusion. The Petitioner has established, by a preponderance of the evidence, that she has met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. *Id.* To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.*

The evidence shows that the Petitioner has earned a Master of Science degree in Pharmaceutics and possesses the skills and knowledge to advance her proposed endeavor. The Petitioner submitted letters from other researchers commending her skills and knowledge and discussing her record of success in efforts related to her proposed endeavor. Professor M-A-O-[2] at the [redacted] Nigeria, stated that they were "able to observe [the Petitioner's] talents during the pursuit of her M.S. degree" and that the Petitioner has "demonstrated a proficiency in numerous skills in the area, including the synthesis, modification and physico-chemical characterization of starch polymers, pharmaceutical oral solid dosage form development, development of HPLC analytical methods, synthesis and characterization of novel drug delivery systems, and the characterization of active pharmaceutical ingredients, non-active pharmaceutical ingredients, and pharmaceutical formulations."

Professor S-K-A- from [redacted] discussed their knowledge of the Petitioner's research and stated that the Petitioner's "novel drug delivery systems are a key research interest in the field because they overcome many of the issues that plague more conventional drug delivery systems," and stated that the Petitioner's work as a "trailblazing effort in the field"

The record also includes evidence of the interest of other researchers and institutions in the Petitioner's proposed endeavor. The Petitioner submitted evidence of articles she co-authored, which have been cited numerous times by independent research teams in her field and further provided evidence that she has been invited to present her research during industry conferences. The Petitioner also submitted a detailed explanation of her proposed endeavor which provides a plan for her future activities, as well as copies of email communications with individuals at the [redacted], which expressed interest in her background and research.

As a result, the record establishes that the Petitioner possesses the education, skills, and knowledge needed to advance her proposed endeavor. The evidence further demonstrates the Petitioner's record of success in research related to her proposed endeavor, contains a plan for her future activities, shows progress she has made towards achieving her proposed endeavor, and documents the interests of other researchers and institutions in her proposed endeavor. On appeal, the Petitioner has established that she is well positioned to advance her proposed endeavor, and the SCOPS contrary determination is withdrawn.

[2] We use initials to protect the identity of individuals.

C. Whether on Balance a Waiver is Beneficial

We also withdraw SCOPS' determination that the Petitioner did not establish that she meets *Dhanasar's* third prong. This prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890. As a pharmaceutical researcher, the Petitioner possesses considerable experience and expertise in research developing novel drug delivery techniques. The record also demonstrates the widespread benefits associated with the development of nanotechnology in drug delivery associated with the Petitioner's research, which would be used to improve the treatment of cancer and HIV. In addition, the Petitioner has documented her past successes in advancing the research associated with her proposed endeavor and in publishing her findings. Based on the Petitioner's track record of successful research and the significance of her proposed work to advance U.S. public health interests, we conclude that she offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available. The Petitioner therefore satisfies the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that she has established she is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.