U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37619418

Date: APR. 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a postdoctoral researcher, 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 did not establish 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 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.

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 doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner's proposed endeavor is to "continue her research on investigating the body's immunological reaction to transplantation in order to inform strategies that improve the body's ability to tolerate kidney transplantation and reduce kidney and other end-organ failure." SCOPS determined that the Petitioner established her eligibility for the EB-2 classification as a member of the professions holding an advanced degree. In addition, SCOPS concluded that the Petitioner's proposed endeavor met the first prong of the *Dhanasar* framework. However, SCOPS further concluded that the Petitioner did not establish she was well positioned to advance the proposed endeavor or 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. On appeal, the Petitioner contends that SCOPS failed to consider all the relevant evidence and made multiple errors that indicate an abuse of discretion. While we disagree with some of SCOPS' analysis; we too conclude that the Petitioner did not demonstrate that her proposed endeavor satisfies *Dhanasar's* second prong, as discussed below.

The second prong of the *Dhanasar* framework shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine whether they are 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 Petitioner contends that she has submitted evidence to establish that she has the education, skills, knowledge, and record of success that establishes she is well positioned to advance the proposed endeavor. *Id.* She submitted a diploma of her foreign degree of doctor of medicine along with transcripts and an academic evaluation which states that her degree is the equivalent to a "first professional degree in medicine" in the United States. We acknowledge that the record establishes she has education in the field of her proposed endeavor. The Petitioner further states that she has direct experience in general surgery. We note that the Petitioner has not submitted sufficient evidence to support her surgical experience. The record contains her work history on Form ETA- 9089 and a curriculum vitae; however, a petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. The record does not contain sufficient corroborating evidence in support of the Petitioner's experience as a surgeon.

[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).

The Petitioner further asserts that she establishes she has the education, skills, knowledge, and record of success to advance her proposed endeavor through the publication of her work in journals. The Petitioner submitted evidence of her published research, evidence of others in the field citing her work, and expert opinion letters discussing how her work has been used by others in the field. SCOPS' main focus in their decision is on the Petitioner's published work and on appeal, the Petitioner highlights parts of their analysis where she states SCOPS erred in their scrutiny of this evidence. For instance, SCOPS determined that the Petitioner failed to provide sufficient evidence of how her published work has been frequently cited by independent researchers or has otherwise served as impetus for progress in the field. The Petitioner contends that she provided evidence of various works citing her research and submitted expert opinion letters attesting to the impact of her work. SCOPS further determined that, in one publication, the Petitioner is the "ninety-fourth (94^{th}) researcher out of ninety-nine researchers . . . cited in their work" and therefore, this did not equate to a record of success. We agree with the Petitioner; that her work is cited by others in the field and her research appears ninety-fourth in this instance because of where she appears in the publication and this does not relate to the success of her work. The Petitioner contends that SCOPS erred by concluding that others have conducted similar research and therefore the Petitioner's work is not novel. This analysis is outside of the *Dhanasar* framework. SCOPS further determined the Petitioner did not establish her eligibility for prong two as she was not the "principal researcher" or "principal investigator" in her work. The Petitioner states that "[c]o-authorship of a scientific article does not minimize a given researcher's contributions to the given study." We agree that an individual can be a co-author and be well-positioned to advance their endeavor.

Although we acknowledge the above claims, and the Petitioner's research history, we too find the Petitioner did not establish she is well positioned to advance her proposed endeavor as the evidence in the record is insufficient. For example, the Petitioner's previous research focuses on different areas of medicine than her proposed endeavor such as dermatology, obstetrics, and orthopedics. The record does not sufficiently establish how she has the skills, knowledge, and record of success to advance research in immunological reactions to transplantation; as is her endeavor's focus. Although evidence of her publications establish the Petitioner has previously participated in medical research, the record does not establish that the Petitioner previously worked in this particular field of medicine. The Petitioner does not explain how her previous work in other areas of medicine demonstrates she is well positioned to advance the proposed endeavor before us. Therefore, the record does not establish that the Petitioner has the skills, knowledge, or record of success to conduct research on immunological reactions to transplantation.

In addition, the Petitioner contends that her "record of publication in prestigious journals" illustrates her progress toward achieving the proposed endeavor. Here, the record does not establish that her previous work demonstrates progress toward achieving the proposed endeavor. For example, the record does not establish how her work on articles such as, "Microneedling in vitiligo: A systematic review," or "A Retrospective Comparative Study Assessing Patients With Acute Appendicitis During the Pre and Through Lebanese Financial Crisis," demonstrates progress toward achieving her proposed endeavor to conduct research on immunological reactions to transplantation. This evidence does not relate to her proposed endeavor and therefore, the evidence in the record is insufficient to establish she has made progress toward achieving the proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890.

Further, the Petitioner asserts that SCOPS failed to analyze the document entitled "Proposed Endeavor & Future Plans in the Field" as a model or plan for future activities. *Id.* In reviewing the document, we conclude the plan is insufficient to determine the Petitioner is well positioned to advance the proposed endeavor. For example, the plan does not provide details regarding the specifics of how the research will be conducted, the scope of the Petitioner's role in the research, and how much of the plan the Petitioner developed or if she played a significant role in developing the plan. *See* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual. In addition, the record does not contain sufficient corroborating evidence of this plan. As stated above, a petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. The record does not contain sufficient corroborating evidence of the Petitioner's role at the university where she will be conducting this research. For instance, there are no letters from her employer or other forms of documentation corroborating the Petitioner's employment, the plan for the proposed endeavor, her role in the research project, and how she is making progress toward her proposed endeavor. Therefore, although the record contains a "model or plan for future activities," the submitted evidence is insufficient to establish she is well positioned to advance her proposed endeavor.

Finally, the Petitioner contends that her research has been featured in journals and has been cited, and this amounts to "interest of potential customers, users, investors, or other relevant entities or individuals." *Matter of Dhanasar*, 26 I&N Dec. at 890. While the record establishes that the Petitioner's previous work has been featured in journals and has been cited, interest in her previous research is insufficient to establish interest in her proposed endeavor; to research immunological reactions to transplantation. The Petitioner has not submitted sufficient evidence of interest of potential customers, users, investors, or other relevant entities or individuals in her proposed endeavor; to research immunological reactions to transplantation. Therefore, the record does not establish the Petitioner is well positioned to advance her proposed endeavor. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner has not established she is well positioned to advance her proposed endeavor, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the Petitioner is ineligible for a national interest waiver, we need not reach, and therefore reserve, remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.