U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37760631

Date: AUG. 12, 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 did not establish he is well-positioned to advance his 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, 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." *Id.*

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.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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. at 889.

II. ANALYSIS

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner listed the job title of his proposed endeavor as "Communication & Imaging Engineer." He proposes to use his communication and digital signal processing skills to design and develop advanced imaging techniques and devices to generate accurate and precise images to assist law enforcement and medical diagnostics. In the law enforcement context, the Petitioner's endeavor "aims to provide precise imaging with fraud recognition technology to support national security through law enforcement operations," which he asserts has applications to our border security since his images can verify an individual's identity. The Petitioner further claims that law enforcement could use his images to compare two or more faces and determine whether they are the same person, which will lead to the identification of criminal suspects, crime victims, or other persons of interest and is of import to our national security and public safety. In the health care context, the Petitioner's endeavor aims to ensure accurate diagnosis and appropriate therapy as well as a reduction in the health risks and costs associated with too much diagnostic imaging.

SCOPS determined that the record established the Petitioner's qualification for the underlying EB-2 visa classification as an advanced degree professional, and that he established eligibility under prong one of the *Dhanasar* framework. SCOPS further determined that the Petitioner did not establish eligibility under prongs two and three of the *Dhanasar* framework and, therefore, found him ineligible for a discretionary waiver of the job offer requirement.

On appeal, the Petitioner asserts that SCOPS erred by ignoring relevant evidence in the record, case law, and provisions of the USCIS Policy Manual. As such, the Petitioner maintains that the decision does not provide an adequate explanation or sufficient basis for the denial of the petition. Upon review, the record indicates that SCOPS' decision lacked a proper analysis of the relevant evidence. For the reasons discussed further below, we will withdraw SCOPS' decision and remand the matter to SCOPS for entry of a new decision.

---

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[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).

A. Advanced Degree Professional

SCOPS determined the Petitioner is an advanced degree professional and thus eligible for EB-2 immigrant classification. The Petitioner provided copies of two degrees showing he was issued a master's degree in information technology from [redacted], and a master's degree in communication and digital signal processing from the [redacted] in [redacted] Nigeria. He also submitted a two-page credentials evaluation and authentication report which equates each of the Petitioner's master's degrees to the U.S. equivalent of a master's degree "from a regionally accredited institution."[3] However, the petition is not accompanied by an official academic record showing that the Petitioner has a U.S. advanced degree or a foreign equivalent degree as required by 8 C.F.R. §204.5(k)(3)(i).[4] Notably, the record is missing transcripts for both of the Petitioner's foreign master's degree programs. Without transcripts, the record is not sufficient to establish that the Petitioner is a professional holding an advanced degree.

On remand, SCOPS must determine if the Petitioner is a professional holding an advanced degree. If SCOPS determines he is not eligible for EB-2 classification as an advanced degree professional, SCOPS must evaluate the Petitioner's assertions and evidence submitted to establish he is eligible for EB-2 classification as an individual of exceptional ability as defined by 8 C.F.R. § 204.5(k)(2).

B. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

SCOPS determined that the Petitioner's proposed endeavor has substantial merit and national importance under prong one of the *Dhanasar* framework. However, SCOPS did not adequately explain how the evidence in the record led to that determination. Instead, the decision simply quoted the Petitioner's statements regarding his endeavor without any analysis. On remand, SCOPS must explain in writing the specific reasons for the decision. 8 C.F.R. § 103.3(a)(l)(i).

C. Well-Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Matter of Dhanasar*, 26 I&N Dec. at 890. To determine whether the Petitioner is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: his 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

[3] The evaluation does not detail how the evaluator reached such a conclusion.

[4] In the alternative, 8 C.F.R. §204.5(k)(3)(i) permits the submission of an official academic record showing that the individual has a U.S. baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the individual has at least five years of progressive post-baccalaureate experience in the specialty.

other relevant entities or individuals. *Id.* In addition, for science, technology, engineering and mathematics (STEM) degrees and fields, there are additional evidentiary considerations. *See generally* 6 *USCIS Policy Manual* 5.D(4), https://www.uscis.gov/policy-manual. Our guidance states that an "advanced degree, particularly a Doctor of Philosophy (Ph.D.), in a STEM field tied to the proposed endeavor and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security" is considered an especially positive factor t under the second prong. *Id.*

SCOPS determined that the Petitioner did not establish that he is well-positioned to advance his proposed endeavor. On appeal, the Petitioner asserts that SCOPS erred in their evaluation of his eligibility under prong two of the *Dhanasar* framework because SCOPS erroneously cited to *Dhanasar's* first prong analysis to support its prong two analysis. SCOPS discounted the relevance of the Petitioner's authorship of scholarly articles, stating "[t]he article may establish the overall importance of various topics in general, but the relevant question is not the importance of the field, industry, or profession in which the individual will work. Instead, USCIS focuses on the "specific endeavor that the foreign national proposes to undertake." However, as stated above, the second prong shifts the focus from the proposed endeavor to the Petitioner, and because the Petitioner's endeavor is in a STEM field, other special considerations may apply. *Id.* On remand, SCOPS should properly analyze the record to determine whether the Petitioner is well-positioned to advance the proposed endeavor.

D. Whether on Balance a Waiver is Beneficial

The third 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish 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 891. In addition, as stated above, SCOPS must evaluate the evidence with consideration to our STEM guidance. *See generally* 6 *USCIS Policy Manual*, *supra*, at 5.D(4). Our STEM guidance explains that the following combination of facts may be a strong positive factor, including: the person possesses an advanced STEM degree, particularly a Ph.D.; the person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and the person is well positioned to advance the proposed STEM endeavor of national importance. *Id.* In addition, the benefit of granting a national interest waiver is especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies. *Id.*

SCOPS stated the third prong's balancing analysis and concluded that the Petitioner "has not established 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." However, SCOPS did not adequately explain how the

evidence in the record led to that determination. Furthermore, SCOPS did not appear to take our STEM guidance into account. On remand, SCOPS' decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested EB-2 classification and discretionary national interest waiver, SCOPS' decision did not adequately address the submitted evidence or properly apply *Dhanasar's* analytical framework and our STEM policy guidance. For the reasons outlined above, we are remanding the petition for entry of a new decision. SCOPS may request any additional evidence considered pertinent to the new determination.

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