U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41002676

Date: FEB. 03, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a lawyer and entrepreneur, 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 record did not establish that the Petitioner is eligible for the underlying EB-2 immigrant visa classification. In addition, SCOPS determined that he had also not established that he merits a national interest waiver of that classification's job offer requirement. 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*.

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.

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. EB-2 IMMIGRANT VISA CLASSIFICATION

The Petitioner claimed eligibility for the EB-2 classification as a member of the professions holding an advanced degree based upon his Bachelor of Law degree from an institution in Brazil and evidence regarding his work experience as a banker and lawyer. However, in its decision SCOPS did not evaluate the Petitioner's eligibility as a member of the professions holding an advanced degree. Instead, it concluded that the Petitioner met three of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii) pertaining to an alien of exceptional ability without specifying which individual criteria were met or providing an analysis of the evidence. SCOPS then concluded that the Petitioner had not established that he possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business, but again did not provide the required analysis of the totality of the evidence to determine the Petitioner's eligibility as an alien of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), www.uscis.gov/policy-manual. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994)(finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). SCOPS did not explain the reasons for its conclusion regarding the Petitioner's eligibility for the EB-2 classification, so we withdraw that conclusion.

[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).

[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).

Because per the following discussion we conclude that the Petitioner is not eligible for and does not merit a national interest waiver, and this issue is dispositive of his appeal, we decline to reach and hereby reserve the issue of his eligibility for the EB-2 visa classification as a member of the professions holding an advanced degree. *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. NATIONAL INTEREST WAIVER

The Petitioner proposes to manage a legal services firm, [redacted],[3] which he founded in the [redacted]. A business plan submitted with his petition indicates that the company will focus in the areas of real estate development financing, small business loans, compliance consulting, bankruptcy, agricultural financing, life insurance, retirement planning, and housing mortgage services. The plan also states that [redacted] will advise companies and individuals in the United States on entering the Brazilian market, and identify opportunities in the United States for Brazilian investors.

A. 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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

SCOPS determined that the Petitioner's proposed endeavor of operating and managing [redacted] as a firm offering financial legal services was of substantial merit. We agree.

Regarding the national importance of his proposed endeavor, the Petitioner stated in his response to SCOPS' RFE that [redacted] would have an economic impact rising to the level of national importance through its creation of 19 direct jobs and 95 indirect jobs in the Washington, D.C. area. In addition, he asserted that his proposed endeavor would have national importance because it would improve access to legal and financial advice, serve to strengthen global economic ties, and "promote legal literacy within underserved regions." However, SCOPS determined that the Petitioner had not established that the potential prospective impact of his operation and management of [redacted] would extend beyond the firm and its clients to have implications in the broader field, and thus did not rise to the level of national importance.

On appeal, the Petitioner notes that his firm will offer its services to entrepreneurs, investors, and businesses at the national and international level, and asserts that this activity demonstrates the national importance of his endeavor. But we stated in *Dhanasar* that while national importance may derive from national or global implications within a particular field, it is not evaluated solely in geographic terms. *Id.* Rather, it is the broader implications of a specific proposed endeavor that we consider. Here, the Petitioner has not established that [redacted] provision of financial and legal services to clients

[3] The Petitioner acknowledges that he is not licensed to practice law in any jurisdiction in the United States, but that his firm will "offer legal-adjacent support" and will collaborate with licensed US attorneys.

potentially located throughout and outside of the United States would be sufficient by itself to show his endeavor's national importance to the broader legal and financial services fields.

The Petitioner also asserts that the job creation impact of his proposed endeavor would be of national importance. As noted above, the business plan for [redacted] projects the hiring of 19 employees within 5 years of the company's start of operations, although 4 attorney positions are described as part-time and 3 accountant positions are listed as contractors. It also projects revenues at the end of the fifth year of operation at more than $2.6 million, with net income of more than $650,000. A proposed endeavor may have national importance if it is shown to have "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in a depressed area." *Id.* at 890. But the Petitioner has not offered sufficient evidence that the [redacted] area where [redacted] will operate is economically depressed, that the company would employ a significant population of workers in that area, or that the endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue.

Specifically regarding the economic strength of the areas where the Petitioner proposes to further his endeavor, we note that the business plan for [redacted] indicates that the Petitioner's business would operate in a Historically Underutilized Business Zone (HUBZone)[4] in [redacted] and plans to open additional branches in other HUBZones to help develop the local economies. But the Petitioner has not demonstrated that his business meets the requirements for HUBZone certification. Also, to the extent that the Petitioner is attempting to use this information to show that his business is or will be located within an "economically depressed area" per the example in *Dhanasar*, the evidence does not establish [redacted] ability to qualify for HUBZone certification, and more importantly does not sufficiently show that a designated HUBZone is an economically depressed area. Further, even if the Petitioner's business were to yield new jobs in a HUBZone, he has not shown that the nature or size of this impact would rise to the level of national importance.

In addition, the Petitioner asserts that his proposed endeavor is of national importance due to the economic impact and contributions of the legal services industry in which it would operate. But in determining national importance, the relevant consideration is not the importance of the field or industry in which the proposed endeavor will operate. Rather, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Although the Petitioner indicates that [redacted] would provide valuable financial and legal services to its clients, the record does not include evidence sufficient to show that the potential prospective impact of his proposed endeavor would rise to the level of national importance. Notably, in Dhanasar we concluded that the petitioner's proposed teaching activities were not of national importance because they would not impact his field at a broad level. Id. at 893. By the same reasoning, we conclude that the record does not show that the impact of the Petitioner's proposed endeavor would extend beyond his potential employees and clients to have broader implications in the legal services industry or the fields of law or entrepreneurship.

[4] The HUBZone program promotes business growth in underutilized business zones with the goal of awarding three percent of federal contract dollars to companies that are HUBZone certified. *See* https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. Operating a business in an HUBZone offers several advantages including eligibility for federal contracting preferences, access to set-aside contracts, and potential tax

For all of the reasons discussed in the foregoing, the Petitioner has not established that his proposed endeavor has national importance, as required under the first prong of the Dhanasar analytical framework, and he is therefore ineligible for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third Dhanasar prongs would thus serve no meaningful purpose. Accordingly, we reserve those issues. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The record does not establish that the Petitioner's proposed endeavor is of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework. Because he cannot meet all three prongs of the *Dhanasar* framework, the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver of the EB-2 immigrant visa classification's job offer requirement.

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.

incentives. *Id.* Businesses seeking HUBZone certification must ensure that their business is owned and controlled by U.S. citizens, a community development corporation, an agricultural cooperative, or an Indian tribe. *Id.* Further, the business' principal office must be located in the designated HUBZone, and it must be the location where the greatest number of employees perform their work. *Id.*