U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40376102

Date: FEB. 4, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a researcher who 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 (NIW) 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).

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but he did not merit a discretionary waiver of the job offer requirement in the national interest. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

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.

Id.

[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).

II. ANALYSIS

A. The Proposed Endeavor

The Petitioner initially provided a personal statement reflecting his proposed endeavor would consist of the following:

> My proposed endeavor is to develop a financial and marketing integrated model that incorporates the direct and indirect effects of company capital, marketing initiatives, and customer relations on small business performance in order to offer novel insights on business performance assessment and contribute to economic development. To progress this endeavor, I will utilize my extensive experience with organizational behavior, marketing, and strategic management. My work will continue to be circulated in the field through my peer-reviewed publications in journals and conference proceedings.

In that same statement, he indicated that he intended to pursue a professorship in the United States listing planned research topics associated with that professorship as assessing the factors influencing the growth of women entrepreneurs in selected African countries and evaluating determinants impacting small businesses in the United States. But that professorship and research topics were not included as part of his proposed endeavor. Counsel's cover letter largely reflected the same endeavor in which they stated:

> [The Petitioner's] proposed endeavor is to develop a financial and marketing integrated model in order to offer novel insights on business performance assessment and contribute to economic development.
>
> As an expert in the field of business administration, [the Petitioner's] proposed endeavor is to continue his research on developing a financial and marketing integrated model that incorporates the direct and indirect effects of company capital, marketing initiatives, and customer relations on small business performance in order to offer novel insights on business performance assessment and contribute to economic development.

When responding to SCOPS' request for evidence (RFE), the Petitioner's counsel was adamant that his proposed endeavor only included the efforts reflected in the blocked quotes above and in no way was the professorship or the attendant research as a professor supposed to be included as his proposed endeavor. But counsel's statements conflict with the Petitioner's personal statement he offered in the RFE response. The Petitioner's RFE-provided statement expanded the proposed endeavor to include offering insights to U.S. agencies and non-governmental organizations about challenges Ethiopian businesses face. He also listed four areas of research that were not part of developing a financial and marketing integrated model, to offer insights into business performance and economic development and the future works he would publish about that effort. We further observe that in his personal statement the Petitioner submitted in the RFE response, he indicated that he currently works as a customer relationship staff member at a property management company.

Because the basis for the Petitioner's eligibility claim changed to such an extent between the initial filing and his RFE response, we conclude that he made a material change to the petition. We consider this a material change to the Petitioner's claims as he had not established his eligibility at the time of filing but seemingly sought to remedy a shortcoming in his filing with materially different evidence after SCOPS put him on notice. A visa petition may not be approved after a beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If a petitioner is notified of a deficiency in their claims or evidence, new claims or new material that greatly differs from that previously presented without a sufficient explanation, will not carry sufficient evidentiary weight to meet their burden of proof.

This ambiguity the Petitioner introduced serves as an independent basis to deny the petition or to dismiss the appeal. And because this leaves open questions as to what activity the Petitioner intends to serve as the focus of his proposed endeavor, it also leaves us facing ambiguities as to what claims we should evaluate, or whether he might make future changes to his endeavor. The Petitioner has not established the substantive nature of his proposed endeavor. Absent that foundational showing, we cannot decide whether he has satisfied any of *Dhanasar's* three prongs as it precludes us from making a proper determination of whether: (1) the proposed endeavor has both substantial merit and national importance; (2) he is well positioned to advance the proposed endeavor; and (3) on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The *Dhanasar* framework cannot be applied to multiple proposed endeavors that have developed differently over the course of the proceedings and that have different effects in the areas that would comprise the Petitioner's areas of research. It is the Petitioner's burden to demonstrate eligibility and as part of that duty he must identify the specific endeavor he proposes to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. But the Petitioner here has not met that burden, which is comprised of both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

B. We Reserve Our Determination on The Petitioner's Remaining Appellate Claims

As we explain above, the Petitioner made a material change to the petition and that prevents us from making a proper determination. Consequently, we will not address, and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also M-C-C-*, 29 I&N Dec. 401, 405–06 (BIA 2026) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

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.