U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41433366

Date: FEB.13, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a mechanical engineer 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

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, 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. USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the First, Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals).

II. ANALYSIS

The Petitioner is a mechanical engineer with more than three decades of experience.

A. National Interest Waiver

We will dismiss the appeal as the Petitioner has made material changes to his eligibility claims and they are substantial to the point that he has not established the substantive nature of the work he proposes to perform. Before SCOPS he proposed to develop advanced automated painting systems for sustainable manufacturing in the United States. But now on appeal, he notes his proposed endeavor has undergone an evolution and he will design and implement intelligent road-signaling systems that integrate automation and materials science for improved safety and sustainability.

Because the basis for the Petitioner's proposed endeavor claim changed to such an extent between the initial filing and his appeal, we conclude that he made a material change to the petition and to his eligibility claims. We consider this a material change to the Petitioner's claims as he had not established his eligibility at the time of filing but 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).

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 future work. 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 Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 n.8 (BIA 2025) (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.