U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40734208

Date: JAN. 13, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a systems engineering specialist and an entrepreneur in the information technology (IT) industry, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

Service Center Operations (SCOPS) denied the petition, concluding although the Petitioner qualified as an advanced degree professional, he did not establish that 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 withdraw SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

The Petitioner's proposed endeavor is to establish a software solutions consultancy firm in [redacted], Florida. The record supports that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

On appeal, the Petitioner contends SCOPS' decision contains "instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion." Specifically, the Petitioner points out that SCOPS incorrectly indicated that there is no appeal from the decision and that SCOPS' adjudication concerned a different applicant as they incorrectly indicated that the proposed endeavor involves language education.

We agree with the Petitioner and withdraw SCOPS' decision regarding the Petitioner's eligibility for the national interest waiver as it is insufficient for review. We observe that SCOPS incorrectly mischaracterized the Petitioner's proposed endeavor in their first prong analysis under the *Matter of Dhanasar*. For instance, SCOPS stated that the articles submitted are "about bilingualism and language learning" and focus "on general benefits on bilingualism, broad statistics about Spanish speakers in the U.S., and general government language programs." Moreover, SCOPS concluded that "there is no evidence this endeavor will transform language education broadly versus being in another language service." As noted, the Petitioner is a systems engineering specialist whose endeavor is to establish a software solutions consultancy firm.

Further, while SCOPS generally listed some of the evidence submitted by the Petitioner, SCOPS did not include an analysis of the evidence and an explanation of its deficiency. USCIS regulations require that a denial decision explain specific reasons for denial and notify the affected party of its appeal rights. 8 C.F.R. § 103.3(a)(l)(i), (iii); *cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

Therefore, we conclude that SCOPS erred in identifying the proposed endeavor and did not consider the Petitioner's evidence as submitted in the record. On remand, SCOPS should consider the evidence provided in support of the proposed endeavor's national importance and provide an analysis of that evidence to support its conclusion. Further, while SCOPS found that the Petitioner is well-positioned to advance the specific proposed endeavor, SCOPS did not include any analysis for its conclusion. Based on erroneous references in the record, we are unable to determine whether SCOPS correctly evaluated the evidence for its conclusion.

As to the third prong of *Dhanasar*, SCOPS did not discuss the evidence weighed or addressed the Petitioner's specific claims. Without a proper evaluation of the factors identified in *Dhanasar*, SCOPS determination for this prong was insufficient. On remand, SCOPS should re-evaluate the Petitioner's claims and evidence of under the *Dhanasar* framework.

Overall, the erroneous references to the nature of the Petitioner's proposed endeavor and the lack of discussion of the specific evidence in the record, make it unclear whether SCOPS fully analyzed the evidence submitted by the Petitioner and based the decision solely on that evidence. Therefore, we will withdraw the decision and remand the matter to SCOPS to review the entire record and determine whether he has established eligibility under *Dhanasar*'s three prongs.

This matter will be remanded to SCOPS to determine if the Petitioner has established eligibility for a national interest waiver. SCOPS may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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