U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40777642

Date: JAN, 21, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business administrator, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 qualified for EB-2 classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. SCOPS also concluded that the Petitioner 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 the decision and remand the matter for entry of a new decision consistent with the following analysis.

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. ANALYSIS

With the initial filing, the Petitioner asserted his eligibility for classification as both a member of the professions holding an advanced degree and an individual of exceptional ability. The Petitioner asserted that he holds the equivalent of a United States bachelor's degree in business administration and over five years of progressive experience in the specialty.[3] The Petitioner also asserted that he satisfies at least three of six categories of evidence under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[4]

In the initial filing, the Petitioner stated that his proposed endeavor is "to work as a Business Administrator and entrepreneur in the United States, offering innovative and personalized solutions to help U.S.-based small and medium-sized enterprises optimize their logistics operations and supply chains."

In a request for evidence (RFE), dated November 28, 2023, SCOPS stated that the Petitioner had established that he satisfied at least three of the claimed criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-

[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).
[3] The Petitioner claims to qualify for the EB-2 classification as an advanced degree professional based upon his four years of university education in Brazil. The record contains an evaluation of the Petitioner's academic credentials concluding that he has obtained the equivalent of a U.S. bachelor of business administration degree from a regionally accredited college or university in the United States based upon his completion of the "Título de Bacharel" in 2005. The record also includes letters from the Petitioner's previous employers documenting at least five years of progressive experience.
[4] The Petitioner claims to qualify for the EB-2 classification as an individual of exceptional ability under the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E), and (F).

(F).[5] However, the RFE allowed the Petitioner an opportunity to submit additional evidence in support of a final merits determination on his eligibility as an individual of exceptional ability. The RFE did not address or request any additional information concerning the Petitioner's claim to have an advanced degree.

Additionally in the RFE, SCOPS allowed the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. SCOPS specifically noted that, although his proposed endeavor has substantial merit, the Petitioner did not provide sufficient evidence to establish that the proposed endeavor was of national importance, that 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 the labor certification.

After reviewing the Petitioner's response to the RFE, SCOPS denied the petition. SCOPS addressed the Petitioner's request for classification as a member of the professions with an advanced degree for the first time and concluded that he had not demonstrated eligibility. SCOPS incorrectly stated that the RFE articulated why the Petitioner's evidence on this issue was insufficient, although, as noted above, the RFE did not discuss or analyze the Petitioner's evidence in support of his request for classification as an advanced degree professional.

SCOPS also analyzed the Petitioner's request for classification as an individual of exceptional ability. Here, SCOPS determined that the Petitioner did not submit sufficient evidence to satisfy three of the criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), despite having granted the Petitioner four of these criteria in the RFE. SCOPS concluded that it was not necessary to conduct a final merits determination on this issue.

Addressing the Petitioner's eligibility for a national interest waiver, SCOPS concluded that the Petitioner did not provide sufficient evidence to establish that the proposed endeavor was of national importance, that 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 the labor certification.

On appeal, the Petitioner asserts that SCOPS made "numerous erroneous conclusions of both law and fact." The Petitioner notes that he previously filed a Form I-140 petition seeking EB-2 immigrant classification and a national interest waiver in 2022 and suggests that SCOPS "mixed the contents" of the two petitions, rather than relying on the record of proceedings for the instant petition.

At the outset, we note that SCOPS inaccurately quoted the Petitioner's description of his proposed endeavor and referenced other evidence not in the record. In fact, much of SCOPS' decision appears to have been taken directly from the denial of the Petitioner's earlier filing in 2022. SCOPS' decision does not meaningfully discuss the Petitioner's evidence in the instant petition.

In the decision, SCOPS referenced a business plan dated November 2022 it stated was submitted in response to the RFE. SCOPS stated that the business plan was "inadmissible" because it "postdates

[5] SCOPS stated in the RFE that the Petitioner had satisfied the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), and (E).

the Form I-140 priority date, 17 February 2022." However, the priority date[6] of the instant petition is August 24, 2023, and the business plan in the record, submitted with the initial filing and again with the RFE response, is not dated. SCOPS also referenced an expert opinion letter and employment letters with dates and quotations that do not match the letters in the record.

SCOPS also misidentified the Petitioner's field as the "automotive industry." The record shows that the Petitioner's proposed endeavor is in the field of "logistics and inventory management." SCOPS' inaccurate quote of the Petitioner's description of his proposed endeavor, the reference to a business plan and letters that the Petitioner did not submit, and the misidentification of the Petitioner's field indicate that SCOPS' conclusions were not based on the record in this case.

The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, SCOPS shall explain in writing the specific reasons for denial. An officer must fully explain the reasons for denying the petition in order to allow the Petitioner a fair opportunity to contest the decision and our opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, SCOPS relied on evidence not in the record and misidentified the Petitioner's proposed endeavor and field. Consequently, SCOPS did not provide a sufficient explanation for the reasons for denial and did not provide the basis for a meaningful appeal. Because SCOPS reached its conclusions based on several misrepresentations of the record, the determination will be withdrawn.

On remand, SCOPS should consider whether the record in this case establishes that the Petitioner has obtained the equivalent of an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2) or has otherwise established eligibility for the underlying visa classification as an individual of exceptional ability, and 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.

III. CONCLUSION

SCOPS' decision indicates that the determinations were not entirely based on the record in this case. The decision did not sufficiently specify the reasons for denial, did not provide the Petitioner with a meaningful opportunity to contest the decision, and did not provide us with the basis for meaningful appellate review. SCOPS' decision will be withdrawn and the matter will be remanded for entry of a new decision.

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

[6] The priority date of a petition is the date the completed, signed petition is properly filed with USCIS. *See* section 8 C.F.R. § 204.5(d).