U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 39092344

Date: JULY 2, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a civil engineer, 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).

SCOPS denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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.

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;

[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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

## II. ANALYSIS

SCOPS determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional based on the Petitioner's *Titulo de Medico* diploma from Brazil. However, SCOPS found that the Petitioner did not establish eligibility for a national interest waiver because he did not establish either the second or third *Dhanasar* prongs nor the national importance element of the first *Dhanasar* prong. Upon de novo review, we conclude that SCOPS did not sufficiently put the Petitioner on notice regarding the evidentiary deficiencies and based its findings on evidence that is not in the record. A remand of the matter is therefore appropriate.

Regarding the first *Dhanasar* prong, SCOPS reached its findings based upon information and evidence that is not in the record. For example, the decision finds that the endeavor is not nationally important because the Petitioner's "research topics are already well-covered by leading U.S. institutions," and cites as examples studies such as the [redacted]," and the '[redacted] . . . ." In another section, the decision finds that the Petitioner's research comparing microdiscectomy and chemonucleolysis for spinal treatments is redundant, because "[e]xisting guidelines (e.g., [redacted]) already recommend microdiscectomy as the gold standard" and because the [redacted] reports that 80% of U.S. adults experience back pain, but only 1-3% require surgery." Regardless of whether these conclusions are true, the record lacks information about the studies that SCOPS references or these conclusions from the [redacted] and the [redacted] regarding spinal surgeries.

Similarly, in considering the support letters submitted by the Petitioner, SCOPS appears to have relied upon its own research outside of the record in challenging the conclusions of the writers. The decision discounts one of the support letters that discusses the impact of the Petitioner's research on breast cancer brain metastases because, according to SCOPS, this type of breast cancer "appears to represent only around 10-15% of U.S. breast cancer cases" and because the "Cancer Moonshot Initiative prioritizes pan-cancer immunotherapy research, not subgroup-specific sequencing." Neither this statistic about breast cancer nor this information about the "Cancer Moonshot" initiative are in the record.

In another support letter, the writer discusses the Petitioner's research related to non-small cell lung cancer (NSCLC), the related incidence of leptomeningeal disease, and Osimertinib as a treatment. This letter is found not credible or persuasive because, "[a]ccording to [National Institutes of Health], Leptomeningeal disease affects only 3-5% of NSCLC patients;" because the Petitioner's research conclusions align with "existing NCCN Guidelines based on the FLAURA Trial, 2018;" and because "FDA approved Osimertinib for EGFR-mutated NSCLC in 2015." Therefore, SCOPS found, the Petitioner's "work does not expand [on the medication's] indications or accessibility." Again, the information from the National Institutes of Health, this clinical trial, and the referenced treatment guidelines are not in the record.

SCOPS' analysis of the national importance of proposed endeavor contains multiple instances like these, finding that the Petitioner's claims are not sufficiently established because they are not consistent with information outside of the record. This issue is compounded by the fact that SCOPS initially stated in a request for evidence (RFE) that the Petitioner established the national importance of the proposed endeavor. SCOPS therefore did not advise the Petitioner of the evidentiary deficiencies related to the first prong prior to the denial and did not provide the Petitioner with an opportunity to overcome these deficiencies prior to the denial.

To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence that has been submitted by a petitioner or considered by SCOPS in reaching its decision. If a decision will be unfavorable to the petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). SCOPS bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered by SCOPS in reaching the decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). We will, therefore, withdraw SCOPS' decision and remand this matter.

Regarding the second *Dhanasar* prong, we further note that although SCOPS discussed relevant evidence, including the Petitioner's citation record and letters of support, SCOPS did not analyze the evidence within the framework discussed in *Matter of Dhanasar*. SCOPS found that the Petitioner did not demonstrate that his citation record is "exceptional compared to others in the field" and he did not demonstrate that his research has "influenced medical practice." SCOPS also found that the support letters did not demonstrate that the Petitioner is well-positioned because they did not provide support for the claim that the Petitioner's work is nationally important, conflating the first prong analysis with the second.

In determining whether an individual is well-positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890. On remand, SCOPS should consider whether the Petitioner is well-positioned to advance the endeavor based upon the factors enumerated in *Matter of Dhanasar* as well as any other relevant factors.

For example, SCOPS may consider whether the lack of specificity in the Petitioner's personal statement regarding his stated research goals, which were provided for the first time in response to the RFE, sufficiently demonstrate a "model or plan for future activities." Also related to the Petitioner's plan for future activities, SCOPS may consider whether there is sufficient evidence in the record regarding the [redacted] fellowship program through which the Petitioner intends to advance his endeavor, such as the amount of the time the Petitioner will dedicate to research rather than patient care, the availability of funding or other institutional support for the Petitioner to pursue

the endeavor, and other factors that would impact the feasibility of the Petitioner advancing the proposed endeavor through this employment.[2]

## III. CONCLUSION

Accordingly, the matter will be remanded to SCOPS to determine if the Petitioner has established eligibility based on the evidence in the record and to enter a new decision. 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:** The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] While not required, USCIS considers a job offer or communications with prospective employers relevant to demonstrate the circumstances or capacity in which the petitioner intends to carry out the endeavor and the feasibility of that plan. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.