U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39084288

Date: JUL. 21, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a researcher in supply chain, 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).

Service Center Operations (SCOPS) denied the petition, concluding that while the Petitioner established his qualification for the underlying classification, he did not demonstrate that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, we withdrew SCOPS' decision and remanded the matter for a new entry. Following our remand of the matter, SCOPS dismissed a motion, concluding that the documentation provided by the Petitioner failed to establish that the requirements for filing a motion to reconsider had been met. 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.

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:

[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 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.

On appeal, the Petitioner contends that SCOPS erred in dismissing the case on the basis that it did not meet the requirements of a motion to reconsider. The Petitioner clarifies that no motion to reconsider was ever filed and instead, he properly appealed the initial denial. The appeal was subsequently remanded by us for the issuance of a new decision. Accordingly, the Petitioner asserts that the matter should have been adjudicated in accordance with the remand instructions, rather than dismissed concluding that the Petitioner did not establish proper grounds for reconsideration.

Upon review of the record, SCOPS denied the petition and the Petitioner timely appealed the denial. We reviewed the appeal and found SCOPS's decision did not adequately address all submitted evidence and material issues and remanded the matter with instructions to issue a new decision consistent with applicable law and regulations. In response to our remand, SCOPS issued a decision dismissing the petition, stating that the record did not support a favorable outcome. However, SCOPS indicated that the matter was being treated as a motion to reconsider and denied the petition on that basis. Upon review, we find that SCOPS improperly treated the remanded case as a motion to reconsider rather than issuing a new decision based on the remand and the merits of the initial filing. SCOPS erred in recharacterizing the procedural posture of the case. We remand the case again for issuance of a decision following the instructions of our remand and issue a new, independent decision based on the totality of the evidence and applicable legal standards governing national interest waiver eligibility.

We agree with the Petitioner's assertion that the decision is deficient. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Furthermore, a decision denying a benefit must include the specific reasons for denial and sufficiently explain the underlying deficiencies to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g.*, *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). Here, the decision did not meet these requirements.

In evaluating *Dhanasar*'s first prong on remand, the Director should analyze the evidence and conclude whether the Petitioner's endeavor has substantial merit. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The Director should also analyze the evidence and conclude whether the Petitioner's endeavor has national importance. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine 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. *Id.* In doing so, SCOPS should fully consider evidence relevant to the second prong analysis, which requires consideration of the individual's education, skills, knowledge, and record of success in related efforts; whether they have a model or plan for future activities; any progress the individual has made towards achieving the proposed endeavor; and evidence of the interest of potential customers, users, investors, or other relevant entities or individuals. SCOPS should address all relevant documentation related to these factors, such as the Petitioner's publication and citation history, and recommendation letters.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91. In performing this analysis, SCOPS may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 891.

While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver, the Director's determination that he did not satisfy any of the three prongs did not adequately address the submitted evidence or properly apply the analysis set forth in *Dhanasar*, and therefore did not sufficiently explain the reasons for denial. For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether he has established eligibility for each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

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