U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38575360

Date: JULY 25, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an epidemiologist, 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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.

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 sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), 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 also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

For the first prong of the *Dhanasar* framework, SCOPS determined that the Petitioner's proposed endeavor as described above has substantial merit and is of national importance. Upon review of the record, we agree that the Petitioner has established that he meets the first prong of the *Dhanasar* framework.

A. The Petitioner Did Not Materially Change the initially Proposed Endeavor.

The initial petition stated that the Petitioner's proposed endeavor was to study the relationship between environmental toxicants and chronic diseases among populations at risk of exposure. In response to a request for evidence (RFE), the Petitioner changed the word "study" to "investigate" and changed the term "environmental toxicants" to "environmental exposures." SCOPS found that the change in terminology was a material change in the proposed endeavor and characterized the term change as a "inconsistent and discrepant," noting that discrepancies encountered in the evidence call into question the petitioner's ability to meet their burden of proof. SCOPS interpreted "environmental toxicants" as specific harmful chemical(s) present in the environment that can cause adverse health effects.

On appeal, the Petitioner has submitted a clarifying statement together with eight reputable sources[2] explaining that environmental toxicants encompass not only chemicals, but also biological and physical agents that can adversely affect health. He explains that asserts the relationship between environmental toxicants and chronic diseases involves assessing the long-term health effects of *exposure to* these toxicants. He states that exposure is a necessary condition for investigating the impact of an environmental toxicant on human health and that his work studying an environmental toxicant as a risk factor for chronic diseases would be meaningless if exposure to the toxicant never occurs.

Upon de novo review, we disagree with and withdraw SCOPS finding that the Petitioner sought to materially change the proposed endeavor and that the purported material change cast doubt on the reliability and sufficiency of the remaining evidence.

B. Well-Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well-positioned to advance the proposed endeavor, we consider factors including, but

[2] The sources include a glossary from an Environmental Protection Agency "Report on the Environment," a dictionary excerpt from National Cancer Institute (NCI) of the terms "toxic" "environmental exposure," an article on cancer-causing substances in the environment from the NCI, and articles from public health scholarly journals.

not limited to 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.* at 890.

In evaluating the Petitioner's request for a national interest waiver, SCOPS concluded that the Petitioner had not established that he is well positioned to advance the endeavor, or that, on balance it would be beneficial to the United States to waive the job offer requirements. On appeal, the Petitioner asserts, among other things, that SCOPS's focus on the erroneous finding that he materially changed the proposed endeavor triggered an undue burden on the Petitioner "to resolve" the purported inconsistency in his proposed endeavor with independent evidence in the record. He also argues that SCOPS did not consider all the evidence or adequately explain the rationale underlying their determination. We agree.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the 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 a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). SCOPS' decision did not meet these requirements, and it is unclear whether they fully considered the record.

For example, the record includes the following: the Petitioner's curriculum vitae; academic records; published and presented work; peer review activity; documentation of articles that cited to his research findings; recommendation letters from academic research colleagues; and documentation relating to the Petitioner's contribution to U.S. NIH and NIEHS projects. The Petitioner received a Ph.D. in epidemiology from the [redacted] in 2022.[3] Evidence shows the Petitioner has been engaged in research related to his degree and has authored peer-reviewed articles of his research which are published in multiple reputable journals and conferences. It is unclear whether SCOPS fully analyzed the record in making their determination. While the evidence in this case may ultimately be insufficient to demonstrate the Petitioner's eligibility for a national interest waiver under the three *Dhanasar* prongs, SCOPS' decision did not adequately address the proposed endeavor or provide sufficient analysis based on the evidence to support their conclusions.

We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit; however, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. For instance, does the record demonstrate that the Petitioner's published and presented work has served as an impetus for progress in his field or constitute a record of success or progress in advancing research relating to environmental exposures to toxicants. Further, while the record indicates that the Petitioner

[3] For purposes of assessment under the second prong, USCIS considers an advanced degree in the fields of science, technology, engineering, and mathematics (STEM), which is tied to the proposed endeavor and related to work furthering a STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence. *See generally* 6 *USCIS Policy Manual,* F.5(D)(2), https://www.uscis.gov/policymanual.

works on funded projects, he does not offer evidence showing that he has been the recipient of any scientific research grants. SCOPS may consider availability of funding for the Petitioner to pursue the proposed endeavor, and other factors that would impact the feasibility of the Petitioner advancing the proposed endeavor through his intended employment.[4] In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893.

If SCOPS concludes that the Petitioner's evidence does not meet a specific eligibility requirement, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. SCOPS may request any additional evidence considered pertinent to the determination prior to issuing a new decision. In remanding, we express no opinion as to the ultimate resolution of this case.

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

[4] 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.