U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40878066

Date: JUL. 28, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an inorganic chemist, 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 the record did not establish that the Petitioner merits a national interest waiver as a matter of discretion. We sustained the Petitioner's appeal of SCOPS' decision, but subsequently reopened the matter.

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 our decision to sustain the appeal 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.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

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

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] 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,[3] 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.

The Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition…" Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(A). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals stated the following regarding revocation:

> In *Matter of Estime*, … this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(quoting *Matter of Estime,* 19 I&N Dec. 450 (BIA 1987)).

[2] 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).

[3] *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).

II. ANALYSIS

The Petitioner proposes to work as a researcher in the field of inorganic chemistry. Specifically, she intends to 1) synthesize new molecules from the family of metal complexes, coordinated polymer nanoparticles, and polyclusters having potential applications in cancer treatment; and 2) develop the application of metal-organic frameworks (MOFs) for CO_2 remediation and energy storage. In our decision to sustain the Petitioner's appeal, we agreed with SCOPS' conclusions that the Petitioner is eligible for the underlying EB-2 classification as a member of the professions holding an advanced degree, and that her proposed endeavor has substantial merit and is of national importance. But we concluded that contrary to SCOPS' decision, the Petitioner had established that she was well positioned to advance her proposed endeavor, and that on balance it would be beneficial to the United States to waive the EB-2 classification's job offer requirements, and thus of a labor certification. Because we sustained the Petitioner's appeal, SCOPS approved the petition. However, per the discussion below, we have determined that our conclusions regarding the second and third prongs of the *Dhanasar* analytical framework should be withdrawn, and we are remanding the matter for SCOPS to consider revocation of the approval of the petition.[4]

A. Well Positioned to Advance the Proposed Endeavor

In the second prong of the Dhanasar analytical framework, we focus on whether a petitioner has shown that they are well positioned to advance their proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. Factors in making that determination include, but are not limited to, the petitioner's education, skills, knowledge, and record of success in related or similar work; their model or plan for future activities to advance the endeavor; their progress towards achieving their proposed endeavor; and the interest of potential customers, users, or other relevant entities or individuals. *Id.*

The Petitioner holds a doctoral degree in inorganic chemistry, a STEM field which she has shown to be directly related to her proposed endeavor, and we acknowledge that this is an especially positive factor under the second prong. *See generally* 6 *USCIS Policy Manual* F.5(D)(4), www.uscis.gov/policy-manual. But we consider many factors under the second prong, and an advanced STEM degree is not sufficient by itself to show that a petitioner is well positioned to advance their proposed endeavor. *Id.* Here, the Petitioner submitted several types of evidence in support of her record of success in efforts related to her proposed endeavor, including her resume and Google Scholar profile, copies of scholarly articles she authored and others which cited to her published work, and reference letters from colleagues, collaborators, and other experts in her field. She also submitted a plan to achieve her proposed endeavor in the United States, and explanations of how the record also shows interest in her work and her progress towards achieving her proposed endeavor. On remand, after review all of the evidence in the record, including the evidence submitted in support of the Petitioner's appeal, in response to our motion to reopen, and any additional evidence submitted in response to their notice of intent to revoke (NOIR), SCOPS should issue a new decision consistent with the discussion below.

[4] In her response to our motion, the Petitioner asserts that we have not followed the procedure for revocation of the approval for petitions at 8 C.F.R. § 205.2. However, because we are withdrawing our sustain decision on the Petitioner's appeal of SCOPS' initial decision and remanding this matter to SCOPS to initiate revocation of their subsequent approval of the petition, the Petitioner's assertion is moot and will not be considered.

In our previous decision, we quoted from several of the reference letters submitted by experts to show the Petitioner's record of success relating to the endeavor and the interest in her work from other researchers in her field. These letters addressed both aspects of the Petitioner's proposed endeavor. Concerning the Petitioner's work in synthesizing coordination polymers, A-M-, who collaborated with the Petitioner on all three of her papers that were published in 2012, described this research and stated that it "is significant for utilization in nanotechnology, medicine, and environmental preservation." And he noted that her research in MOF composites "contributes to the reduction of carbon dioxide, a ket factor in global warming, in the environment." But beyond the potential applications of the Petitioner's research, A-M- does not specify how the Petitioner's research already represents a record of success or has attracted the interest of other researchers or relevant parties.

Another reference letter which describes the Petitioner's work with coordination polymers, written by A-D-K-, notes that his and another research group have cited to the Petitioner's work in this area. While he concludes that these citations show that "the field has come to depend on [the Petitioner's] efforts in the field to a substantial degree" and that "her work is widely regarded as majorly significant to the inorganic chemistry community," we note that the evidence in the record does not support these statements in terms of the quantity or quality of the citations to the Petitioner's published research. Notably, a partial copy of the paper in which A-D-K- cites to the Petitioner's work shows that he refers to it as one of several papers in which researchers used metal ions in constructing coordination polymers. Similarly, the other paper to which he refers in discussing the Petitioner's work in coordination polymers cites to several papers including the Petitioner's as examples of compounds with a particular characteristic. These articles do not highlight or comment upon the Petitioner's research in a way that demonstrates that she is well-positioned to advance her proposed endeavor.

Turning to reference letters discussing the Petitioner's more recent research in synthesizing metal complexes, we previously noted that H-K- stated in his letter that the Petitioner's research "advances a unique solution to treat cancer" and that her findings "are vital to not only understanding the mechanisms of cancer cells, but also for the discovery of improved cancer treatments." In the same vein, we quoted from S-K-'s letter stating that the Petitioner's research "provides significant insight into metal complexes and their anticancer effects as a therapeutic solution for cancer." Both of these letters describe her work in detail, but the conclusions they reach about the impact of the Petitioner's work are not sufficiently supported in the record.

We also noted in our decision to sustain that the Petitioner submitted evidence from Clarivate Analytics showing that as the end of 2023, 5 of the papers which she co-authored and were published in the same year placed within the top 10% in the field of chemistry based on the number of citations to those papers. On review, we note that the same evidence includes a discussion of citation rates below the percentile table which states that "Citation frequency is highly skewed with many infrequently cited papers and relatively few highly cited papers." This is apparent in the 2023 figures for the field of chemistry, which reflect that papers with a single citation ranked within the top 50% whereas papers in the top 1% had only 9 citations, and those in the top .01% had at least 42 citations. These figures do not demonstrate a meaningful difference between the rate of citation of her papers when compared with the mean number of citations in the field and thus reflect a record of success in work related to her proposed endeavor. Further, it is not apparent that the citation rate figures for the broader field of chemistry provide accurate context for comparison with the Petitioner's work in inorganic chemistry.

Similarly, we previously mentioned as a positive factor data from "OpenAlex" showing that the Petitioner ranks among the top 15% of researchers in inorganic chemistry in terms of citation impact and top 5% in terms of productivity. But these figures are not sufficiently supported by evidence of how these percentile figures were calculated, and do not provide sufficient context towards determining whether the Petitioner has demonstrated a record of success.

In addition, we stated in our prior decision that the Petitioner's research in MOFs for the reduction of carbon dioxide was funded by the European Union, and that this along with other factors was a positive indicator of a high level of interest in her work. But we note that this was solely based on a statement in the "Acknowledgements" section of one of the papers co-authored by the Petitioner, and the record does not indicate that the Petitioner was named on grant documentation from the European Union or any of the other funding organizations listed in this section. SCOPS should therefore evaluate whether this evidence supports the Petitioner's claim of interest in her specific work, and ultimately whether it contributes to establishing that she is well-positioned to advance her proposed endeavor.

Concerning the progress made towards achieving her proposed endeavor, we note that the Petitioner conceded in her response to SCOPS' RFE that her previous work in the area of developing MOFs "is not precisely aligned with" her proposal to develop their application to airborne CO_2 reduction and solar energy storage. As she explains, both papers she had published in this area at the time of filing were literature reviews done to gather the information needed to advance her endeavor. Regarding this aspect of her proposed endeavor, the record is insufficient to show that she has made sufficient progress toward achieving its goals.

Finally, the Petitioner has stated that she "is interested in pursuing [her] career as a postdoctoral researcher in the United States," particularly at the [redacted]. While we acknowledge that the nature of a national interest waiver precludes any requirement of a job offer, here the record does not show that the Petitioner has taken concrete steps to secure the means through which she would advance her endeavor. She has sufficiently explained her research plans, but her plans regarding how she will advance her proposed endeavor are not sufficiently developed and supported in the record to demonstrate that she is well positioned to advance her endeavor.

In light of these concerns regarding the analysis under the second prong of the Dhanasar analytical framework in our previous decision and the noted evidentiary deficiencies, we withdraw our previous conclusion. On remand, SCOPS should review the record in light of the above and determine whether it is sufficient to show that the Petitioner is well-positioned to advance her proposed endeavor.

B. Whether on Balance a Waiver is Beneficial

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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. In performing this analysis, we 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.

In our previous decision, we referred to the 2022 National Science and Technology Council Critical and Emerging Technologies (CET) List Update which identified areas of potential significance to U.S. national security. But on review, we first note that it is not apparent that the Petitioner's research in inorganic chemistry for potential cancer treatments fits under the category of biotechnologies in the CET list, as none of the bullet points in that category mention metal complexes, coordinated polymer nanoparticles, or polyclusters. In addition, while "energy storage" under the category of renewable energy and storage appears to align with the Petitioner's proposed research in MOFs, CO_2 remediation is not mentioned. Therefore, to the extent our previous decision relied upon the CET list to support the urgency of the national interest in the Petitioner's overall proposed endeavor, that reliance was largely unfounded.

We acknowledge that the Multi-Agency Research and Development Priorities for the FY 2024 Budget identifies "fundamental research that supports precision medicine" targeting cancer and "emissions mitigation technologies" including carbon capture as research and development priorities for the federal government. This evidence shows that the Petitioner's proposed endeavor to synthesize new metal complexes and coordinated polymer nanoparticles having potential applications in cancer treatment and develop MOFs for application in CO_2 remediation and energy storage aligns with the previous government priorities, supporting the national importance of her endeavor. The evidence concerning the Cancer Moonshot also highlights the priority placed on cancer research. However, per the discussion above, the Petitioner has not established that the level of interest in her proposed endeavor, her progressing in advancing her proposed endeavor, and her plan and commitment to advance her proposed endeavor in the United States make her well-positioned to do so. She has therefore not established that the urgency of the national interest in the advancement of her specific endeavor would warrant foregoing the labor certification process.

In addition, these same considerations show that the United States would still benefit from her contributions even if other qualified U.S. workers are available. The labor certification process is intended to ensure that the admission of foreign workers will not adversely affect the job opportunities, wages, and working conditions of U.S. workers. Upon review, the evidence in the aggregate falls short of establishing that granting a national interest waiver outweighs the benefits inherent to the labor certification process. We therefore withdraw the conclusion in our previous decision regarding the third prong of the *Dhanasar* analytical framework.

III. CONCLUSION

For all of the reasons discussed above, we withdraw the conclusions regarding the second and third prong of the Dhanasar analysis in our previous decision and remand this matter to SCOPS. On remand, SCOPS should consider whether (1) the Petitioner has sufficiently demonstrated that she is well positioned to advance her proposed endeavor and offers contributions of such value that, on balance,

it would be beneficial to the United States to waive the job offer and labor certification requirements or (2) it should issue a notice of intent to revoke.[5]

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

[5] SCOPS should review all evidence in the record, including that submitted in support of the Petitioner's appeal and in response to our motion to reopen.