U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37525485

Date: JUN. 03, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a soccer academy, seeks on behalf of the Beneficiary, a coach, 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 section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

SCOPS denied the petition, concluding that the Petitioner did not establish 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 dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish the beneficiary is 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 the beneficiary's eligibility for the underlying EB-2 classification, the petitioner must then demonstrate that the beneficiary merits 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;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

SCOPS concluded the Beneficiary was eligible for the underlying EB-2 classification as an advanced degree professional. However, it further determined the Petitioner had not demonstrated any of the required three Dhanasar prongs to establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest, and also raised inconsistencies in the record, concluding the Petitioner had not overcome them in its response to the Notice of Intent to Deny (NOID).

On the Form I-290B, Notice of Appeal or Motion, the Petitioner claimed it would submit a brief and/or additional evidence within 30 calendar days of the date of filing, October 2024. As of the date of this decision, a brief and supporting evidence have not been filed.

On the Form I-290B, the Petitioner asserts that SCOPS erred in denying the petition because U.S. Citizenship and Immigration Services (USCIS) previously granted a case where another beneficiary had the same proposed endeavor. However, the decision on the case was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). The record in the other case is not before us and we are not aware of what evidence was or was not included in that filing. Further, we are not required to approve petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. See Matter of Church *Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

The Petitioner also argues on the Form I-290B that SCOPS should have issued a Request for Evidence (RFE), instead of a NOID. The Petitioner does not cite to any binding precedent in support of its assertion. Although 8 C.F.R. § 103.2(b)(8)(iii) gives USCIS the discretion to issue an RFE or a NOID, neither the Act nor the regulations compels us to do so. Moreover, it is within the agency's discretion which if either of the two to issue. See generally 1 USCIS Policy Manual E.6(F), https://www.uscis.gov/policy-manual (providing, as guidance, that USCIS has the discretion to issue RFEs, NOIDs, or to issue a denial without issuing either under some instances).

The Petitioner further asserts that the issues raised in the NOID were "so insufficient as to not properly identify what the Petitioner needed to address." As an example, the Petitioner contends the NOID contained conflicting information as to whether the Petitioner had established the Beneficiary is an advanced degree professional. The NOID explained why the record did not support the Beneficiary was an advanced degree professional and then concluded that the Beneficiary was an advanced degree

[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).

professional. We agree that the NOID was unclear with respect to this specific issue, but the conflicting statements were not material to the ultimate decision. The Petitioner was provided with sufficient notice of the deficiencies and responded to the NOID with additional evidence. SCOPS' decision acknowledged the new evidence and determined the Petitioner had established the Beneficiary's eligibility for the underlying classification. The Petitioner's argument that it was not given enough notice on issues relating to the Beneficiary's eligibility for the underlying classification is therefore moot.

We also conclude the NOID provided sufficient notice of why the Petitioner had not established any of the prongs in the Dhanasar framework. SCOPS addressed the initial submitted evidence and provided examples of evidence that may establish each prong. In the Petitioner's response to the NOID, the Petitioner did not address the issues raised in the NOID with respect to the Dhanasar prongs. Rather, the Petitioner generally asserts that it had more than met its burden to demonstrate the Beneficiary's eligibility for a national interest waiver.

According to the Petitioner's initial brief, the Beneficiary's proposed endeavor is to leverage his coaching and tactical prowess to elevate the Petitioner's female competitors into top recruits at the collegiate and professional levels of women's soccer. In his first personal statement, the Beneficiary adds that he will continue his professional career as the girls' director of coaching and men's assistant coach and will use his experience and connections to build the Petitioner by recruiting female athletes, implementing image deals, expanding facilities, creating teams to compete in top soccer leagues, and produce world-class soccer players in the United States.

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Matter of Dhanasar, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Id. In the NOID, SCOPS determined the Beneficiary's proposed endeavor had substantial merit. However, after "re-reviewing" the record in its decision, SCOPS determined the Petitioner had not provided enough details to evaluate the substantial merit of the proposed endeavor. We conclude the Petitioner's personal statement and submitted articles reflect the endeavor falls within one or more of the areas contemplated by Dhanasar. We therefore withdraw SCOPS' determination that the Petitioner had not established the substantial merit of the Beneficiary's proposed endeavor.

However, as explained in the NOID and the underlying decision, the Petitioner has not established the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id. We noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890.

SCOPS acknowledged that the Beneficiary's endeavor may impact the Petitioner or its individual clients, but determined the Petitioner did not adequately explain or substantiate how the endeavor had broader implications or show that the benefits to the regional or national economy resulting from the

Beneficiary's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by Dhanasar. We agree.

According to the Petitioner's initial brief discussing the national importance of the Beneficiary's proposed endeavor, soccer has social and health benefits. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. See id. at 889 (in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake"). The Petitioner adds that the endeavor will secure the success of female athletes and produce world class soccer players. While the Beneficiary's personal statement describes the scope of the services he intends to provide for the Petitioner, it does not sufficiently show how they extend beyond the Petitioner or its clients. The Petitioner's brief adds that it is part of a league that is partnered with global companies. However, benefits to a specific employer alone, even an employer with a national footprint, are not sufficiently relevant to the question of whether a person's endeavor has national importance. See generally USCIS Policy Alert PA-2025-03, Second Preference Eligibility for National Interest Waiver Petitions 13 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (providing, as guidance, factors to consider in analyzing national importance). At issue is whether the Petitioner can demonstrate that the Beneficiary's individual endeavor stands to have broader implications, such as for a field, a region, or the public at large. Id. Here, the record does not provide any details supporting how the specific functions and tasks carried out by the Beneficiary in his proposed endeavor would have national or even global implications within the field of soccer or would have "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." Matter of Dhanasar, 26 I&N Dec. at 890.

For the above reasons, the Petitioner has not established the national importance of the Beneficiary's proposed endeavor. As the Petitioner did not raise specific issue with SCOPS' determination that it did not establish *Dhanasar's* second and third prongs in the NOID or in the Form I-290B, nor did the Petitioner contest the inconsistencies raised in the decision in the Form I-290B, the Petitioner has waived appeal on this claim. Any ground of ineligibility that is not raised on appeal is waived. See Matter of O-R-E-, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, we will not disturb SCOPS' findings with respect to these issues.

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor, a requirement of *Dhanasar's* framework. Consequently, the Petitioner has not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

ORDER: The appeal is dismissed.