U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37480059

Date: JUNE 4, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner 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 the Petitioner established that he was an advanced degree professional, but had not demonstrated 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 pursuant to 8 C.F.R. § 103.3.[1]

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,[2] grant a national interest waiver if the petitioner demonstrates that: (1) 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.*

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[1] SCOPS appears to have erroneously issued two motion dismissals during the pendency of this appeal. Nothing before us reflects that the Petitioner has filed any motions in this matter.

[2] *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).

In denying the petition, SCOPS concluded that the Petitioner did not satisfy the first and third *Dhanasar* prongs and, therefore, did not qualify for a national interest waiver. On appeal, the Petitioner argues that SCOPS "made a host of errors in evaluating the evidence" with respect to these prongs and generally failed to consider all the relevant evidence. Upon review, we agree that SCOPS' decision is deficient and warrants a remand.

Prior to denial, SCOPS issued a request for evidence (RFE). As raised by the Petitioner on appeal, SCOPS' conclusions in the RFE and in the final decision are contradictory. In the RFE, SCOPS determined that the Petitioner had satisfied all three *Dhanasar* prongs but requested that the Petitioner submit a completed Form ETA-9089. As such, in response, the Petitioner submitted a completed Form ETA-9089, but did not submit additional evidence or offer additional argument to demonstrate he met any of the *Dhanasar* prongs.

SCOPS later denied the petition, concluding that, while the Petitioner had demonstrated he is well positioned to advance the proposed endeavor, and met the second prong, he had not demonstrated his proposed endeavor's national importance or that, on balance, waiving the job offer requirement would benefit the United States. The decision also stated, incorrectly, that the RFE had previously explained that the record did not demonstrate the proposed endeavor's national importance when, as noted above, the RFE, in fact, concluded the Petitioner had met this prong. Additionally, the decision referenced a nine-page brief submitted by the Petitioner in response to the RFE addressing the national importance of his endeavor. However, the Petitioner's RFE response consisted of a three-page brief, which acknowledged SCOPS' conclusions that he met all three *Dhanasar* prongs and did not argue his endeavor's national importance. It is not apparent which document SCOPS was referring to in their decision.

SCOPS' analysis of *Dhanasar's* third prong was likewise inconsistent and unclear. While the decision stated that "the petitioner has not shown an urgent national interest in the beneficiary's own specific contributions; or shown that the beneficiary offers contributions of such value to the nation's scientific community, the economy, etc., that, overall, they would benefit the nation even if other qualified U.S. workers were available," the RFE previously concluded that the Petitioner "has shown he offers contributions of such value that, overall, would benefit the nation even if other qualified U.S. workers were available, or an urgent national interest in his own contributions." These two statements are facially inconsistent. Moreover, SCOPS' denial of this prong in the final decision was largely conclusory so it is unclear why they now found the Petitioner did not satisfy this prong.

The contradictory statements in the RFE and final decision regarding whether the Petitioner had established he met the first and third *Dhanasar* prongs limited the Petitioner's ability to address any deficiencies in the evidence. And, based on their statements outlined above, it is also unclear whether SCOPS reviewed the correct entire record in making their final decision. Accordingly, we cannot conclude that SCOPS' decision reflects a reasoned consideration of the Petitioner's claims and related documents. *See* 8 C.F.R. § 103.3(a)(1)(i) (stating that when denying a benefit, the officer shall explain the specific reasons for denial); *see also Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (providing that a decision should reflect "the substantive completeness of the decision" and must accurately summarize the relevant facts, reflect analysis of the applicable statutes, regulations, and legal procedures, and clearly set forth legal conclusions); *Matter of M-P-,* 20 I&N Dec. 786, 787-88 (BIA

1994) (providing that the reasons for a denial must be clear to allow the affected party a meaningful opportunity to challenge the decision on appeal).

For the above reasons, we withdraw SCOPS' decision and remand this matter for further consideration and entry of a new decision. On remand, SCOPS should review the entire record and determine whether the Petitioner has established eligibility under each of the three *Dhanasar* prongs. SCOPS may consider whether to issue an RFE. If SCOPS concludes that the Petitioner's evidence does not meet the requirements of a specific eligibility requirement, any decision issued should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. In remanding, we express no opinion regarding 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.