U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38600102

Date: JUN. 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement. *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 did not qualify for the underlying EB-2 classification. 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.

I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*. 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.

II. ANALYSIS

The Petitioner indicates that his proposed endeavor is to establish a business that focuses on providing solar energy solutions to residential and commercial sectors in the United States. He contends that the documentation submitted with the initial filing establishes eligibility for the underlying EB-2 visa classification and a national interest waiver. The Petitioner asserts that SCOPS failed to properly evaluate the evidence demonstrating he qualifies as an advanced degree professional and did not provide an opportunity to address and overcome any concerns with a request for evidence. He also argues that SCOPS erred in the individual of exceptional ability evaluation by misapplying documentation that was submitted to show he is well-positioned to advance his proposed endeavor and denied the petition without explaining the specific reasons for denial.

Upon review, we agree that SCOPS did not properly consider the submitted evidence or provide a sufficiently detailed explanation of the reasons for denial. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). 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 a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the decision did not meet these requirements.

SCOPS noted the Petitioner's Bachelor of Science degree in Business Administration, highlighted his professional experience with a renewable energy company, and found he demonstrated the required five years of progressive post-baccalaureate experience in the same specialty as the degree. However, the denial stated that the Petitioner is seeking to work in an unrelated endeavor and his degree and work experience are unrelated to the requirements of a renewable energy expert. SCOPS did not explain how the Petitioner's business degree and 12 years of working with a renewable energy company is unrelated to his proposed endeavor of establishing a business that focuses on providing solar energy solutions to residential and commercial sectors in the United States.

We note that the initial filing, including the cover letter and detailed exhibits, reflect that the Petitioner claimed eligibility as an advanced degree professional, not an individual of exceptional ability. In finding that the Petitioner did not meet the individual of exceptional ability requirements, SCOPS referred to evidence submitted to show he is well-positioned to advance his proposed endeavor, which is part of the national interest waiver eligibility determination. In addition, the denial lacked sufficient

[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).

analysis in determining the Petitioner did not meet at least three of the six criteria required for the individual of exceptional ability classification. SCOPS only addressed five of the six criteria, and for three of the criteria, concluded the criterion had not been met based on the evidence in the record, without identifying the evidence used in the determination or explaining how the evidence did not establish eligibility.

Here, SCOPS failed to properly evaluate the relevant documentation and did not provide the Petitioner an opportunity to clarify or overcome concerns with a request for evidence. Further, the decision's lack of sufficient analysis prevented the Petitioner from filing an appeal that meaningfully addressed it. Accordingly, we withdraw the decision and remand the matter so that SCOPS may issue a new decision that fully considers the Petitioner's evidence and articulates whether that evidence establishes eligibility. If SCOPS concludes that the Petitioner's documentation does not meet the requirements of a specific eligibility criterion, 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.

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