U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36498145

Date: JUNE 16, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a sales division manager and technical advisor, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, Third, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that a discretionary waiver of the job offer requirement, and thus a labor certification, was merited upon application of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We dismissed the Petitioner's appeal but subsequently reopened on our own motion. Consequently, 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.

On April 25, 2025, we issued a notice of intent to dismiss (NOID) the appeal. We instructed the Petitioner to substantively respond to the NOID or request withdrawal of the appeal if they desired to no longer proceed with the appeal.

The NOID informed the Petitioner it had 33 days during which to respond to our notice. However, the Petitioner did not respond to the notice within the allotted timeframe. We may deny a benefit request as abandoned, deny it based on the record, or deny it for both reasons if a petitioner does not respond to a NOID by the required date. 8 C.F.R. § 103.2(b)(13)(i). Because the Petitioner did not respond to our request within the time permitted, we will dismiss the appeal as abandoned.

ORDER: The appeal is dismissed.