U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37856500

Date: JUN. 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a mining engineer, 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 attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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.[1]

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner qualifies for the underlying EB-2 classification but that the record did not establish that a waiver of the job offer requirement is 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification 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)(A) of the Act. Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for 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 USCIS may, as a matter of discretion, 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.

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

SCOPS concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner is a mining engineer and on the Form I-140 he stated that his proposed endeavor is to work as a planning and project engineer and entrepreneur. In a cover letter accompanying his Form I-140, the Petitioner stated that he is the president of [redacted] Inc., a company he incorporated in Florida in 2023, and he plans to direct the operations of this company. The Petitioner submitted a business plan, which states that the Petitioner's endeavor is to "introduce a structured and strategic approach to civil engineering and mining." The Petitioner also submitted corporate registration documents, recommendation letters from former colleagues, letters of recognition for previous projects, documentation of his education and work history, a fact sheet on the Infrastructure Investment and Jobs Act, and articles about labor shortages in science, technology, engineering, math (STEM) fields.

SCOPS found that the Petitioner established the substantial merit of the proposed endeavor but not its national importance under Dhanasar prong one. SCOPS further found that the Petitioner did not establish either the second or third prongs of the Dhanasar framework. As to the national importance of the proposed endeavor, SCOPS found that the record does not demonstrate how the Petitioner's proposed endeavor as a planning and project engineer and entrepreneur in construction and mining will have a broader impact on the field, rising to the level of national importance. SCOPS also found that the Petitioner did not provide information on how his endeavor will create jobs and enhance societal welfare, rising to the level of national importance, or how the proposed endeavor offers substantial positive impact to the U.S. economy.

On appeal, the Petitioner submits a brief, which contains the same arguments as those in the previously submitted cover letter to SCOPS. The brief does not identify any specific legal or factual errors in SCOPS's finding that the Petitioner did not establish his proposed endeavor's national importance and does not address or attempt to overcome any of SCOPS's specific findings as to national importance. Most of the language in the appeal brief appears to be copied from the Petitioner's business plan, providing statistics and general information about the construction and mining industries. The Petitioner does not provide substantive appellate claims that address the basis for SCOPS's decision.

Regardless, upon de novo review, we agree with SCOPS's determination that the record does not establish the national importance of the Petitioner's specific proposed endeavor under the first prong of the Dhanasar analytical framework. The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further 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. Here, we agree with SCOPS's overall determination that the Petitioner has not submitted documentary evidence that demonstrates the proposed endeavor will have broader implications, or national or global implications, within a particular field; have significant potential to employ U.S. workers; have substantial positive economic effects, particularly in an economically depressed area; will broadly enhance societal welfare; or will broadly enhance cultural or artistic enrichment. See id. at 889-90.

The Petitioner's business plan claims that his proposed endeavor will have a broad impact on the construction and mining industries, but this claim is not supported by probative and persuasive evidence in the record. The Petitioner's business plan does not describe the proposed endeavor in detail, stating only that the Petitioner is an experienced mining engineer and "will provide expert services to companies operating in both the Mining and Construction industries, which will be beneficial for the progress and innovations of both industries." We also acknowledge two letters from construction companies offering the Petitioner jobs to oversee construction projects. However, neither the business plan nor these letters show how or establish that his engineering and consulting company would have a broader impact within the field, beyond its own clientele, on a scale consistent with national importance. The record also includes recommendation letters from former colleagues and letters of recognition that focus on the Petitioner's past work and projects. However, the Petitioner's skills, expertise, and abilities relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national" in assessing whether the foreign national is well-positioned to advance the endeavor. See id. at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under Dhanasar's first prong. The business plan does not discuss, and the remainder of the evidence does not show, how the Petitioner's proposed endeavor will advance the progress and innovations in, and therefore broadly impact, these industries. Additionally, the Petitioner's submission of a fact sheet on the Infrastructure Investment and Jobs Act and articles about labor shortages in science, technology, engineering, math (STEM), show the importance of the field of engineering, rather than the national importance of the Petitioner's specific endeavor itself. Id. at 889.

Finally, the Petitioner also did not provide evidence to demonstrate how the proposed endeavor will have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. While we acknowledge that the Petitioner submitted two job offer letters from construction companies located in Florida, they are not sufficient to show, and the Petitioner has not otherwise provided, specific details or evidence establishing that his engineering and consulting company would provide substantial economic benefits to Florida or the region or the U.S. economy more broadly at a level commensurate with national importance. There is no evidence that his endeavor would offer a substantial economic benefit through employment levels, business activity, or tax revenue. Further, the Petitioner has not offered evidence that the area where his company will operate is economically depressed and that his company would employ a significant population of workers in that area. Without such evidence, we cannot evaluate the proposed endeavor's impact on job creation or its overall economic impact.

In summary, the Petitioner has not established that his proposed endeavor has national importance, as required by the first prong of the Dhanasar analytical framework. Because the Petitioner has not met

the requisite first Dhanasar prong, we conclude that the Petitioner has not established that he is eligible for a national interest waiver. Because this determination is dispositive of the Petitioner's appeal, we reserve our opinion regarding whether the record satisfies the second or third Dhanasar prong. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.