U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38827364

Date: JUNE 26, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a computer and information systems manager, seeks classification as an alien of exceptional ability in the sciences, arts or business. *See* 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 EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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.

SCOPS denied the petition, concluding that the record did not establish that the Petitioner qualifies for classification as an alien of exceptional ability. The matter is now before us on appeal under 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 SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

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 alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

A petitioner eligible for EB-2 classification 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), states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the alien is well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

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). To establish eligibility as an alien of exceptional ability, a petitioner must submit evidence that satisfies at least three of the six categories listed at 8 C.F.R. § 204.5(k)(3)(ii), summarized below:

(A) An academic degree relating to the area of claimed exceptional ability;
(B) Ten years of full-time experience in the occupation;
(C) A license or certification for the profession or occupation;
(D) A salary or other remuneration that demonstrates exceptional ability;
(E) Membership in professional associations; and
(F) Recognition for achievements and significant contributions to the industry or field.

If the above standards do not readily apply to the alien's occupation, the petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii). If an alien meets at least three of the regulatory criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the alien's field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

The Petitioner initially claimed to have submitted evidence to satisfy all six of regulatory criteria.

SCOPS denied the petition in February 2025, without first issuing a request for evidence (RFE). SCOPS concluded that the Petitioner had satisfied three of the criteria, pertaining to degrees, licensure or certification, and membership in professional associations. But SCOPS then stated that the Petitioner "has not met at least three of the six criteria," and therefore "USCIS will not conduct a final merits determination" regarding the exceptional ability claim.

On appeal, the Petitioner correctly observes that this conclusion is not consistent with the determination that the Petitioner had satisfied the criteria pertaining to degrees, certification, and membership in professional associations. The Petitioner requests "that the case be remanded . . . for further adjudication under normal processing procedures, including issuance of an RFE or NOID [notice of intent to deny]."

We agree with the Petitioner that, given the contradictory conclusions in the denial notice, the best course of action is to remand the matter to SCOPS for further consideration.

We note that the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C) calls for "[a] license to practice the profession or certification for a particular profession or occupation." The Petitioner submitted copies of certificates issued by [redacted]. SCOPS noted that "most of these certificates have expired," but concluded that "the petitioner holds 2 certifications and the evidence submitted meets this criterion."

This issue appears to require further inquiry and evidence. It is not evident that the submitted certificates amount to certification for a particular profession or occupation, rather than completion of training courses for specific skills. An RFE may be in order to provide more information in this regard.

We note that, in determining that the Petitioner had not met the criterion relating to salary at 8 C.F.R. § 204.5(k)(3)(ii)(D), SCOPS cited information obtained from a web search. When a denial will rest, in whole or in part, on information originating outside the record, the proper course of action is to include that information in the record and advise the petitioner of that information in a NOID, as set forth at 8 C.F.R. § 103.2(b)(8) and (16)(ii), in order to allow the petitioner an opportunity to respond to that information before the issuance of a decision.

In the event that SCOPS again concludes that the Petitioner has satisfied at least three of the initial criteria at 8 C.F.R. § 204.5(k)(3)(ii), then SCOPS must undertake a final merits determination for the claim of exceptional ability. If SCOPS determines that the Petitioner has established exceptional ability, then SCOPS must consider the Petitioner's claim of eligibility for the national interest waiver under the *Dhanasar* framework.

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