U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39084487

Date: JUNE 27, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a masonry and stone restorer focused on sustainability and historic preservation, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*; *see also Brasil v. Sec'y, Dep't of Homeland Sec.*, 28 F.4th 1189, 1193 (11th Cir. 2022) (holding that a national interest waiver is a discretionary decision).

Service Center Operations (SCOPS) denied the petition. SCOPS found the Petitioner eligible for EB-2 classification as a member of the professions holding an "advanced degree" and that his proposed work has "substantial merit" and "national importance." SCOPS concluded, however, that he did not demonstrate that he is well positioned to advance the venture or that, on balance, a waiver of the U.S. worker protections would benefit the country. On appeal, the Petitioner contends that "the decision did not fully take into account critical evidence."

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that, in finding him eligible for EB-2 classification, SCOPS did not consider whether his proposed job requires an advanced degree professional. Also, we are unable to effectively review the national importance finding because SCOPS did not explain its reasoning. We will therefore withdraw SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as advanced degree professionals or aliens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect jobs for U.S.

workers, this immigrant visa category usually requires prospective U.S. employers to offer aliens work and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be "in the national interest." Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or aliens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- All things considered, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016); *see generally* 6 *USCIS Policy Manual* F.(5)(D)(1), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Petitioner and His Proposed Endeavor

The record shows that a Venezuelan university awarded the Petitioner a bachelor of science degree in mechanical engineering. He later gained about seven years' experience in Canada as a bricklayer and construction developer, with more than 560 masonry projects under his belt.

Now in the United States, the Petitioner has established a limited liability company and proposes to start a construction company. He stated that the firm would specialize in masonry and concrete services, focusing on levee construction, design and repair, brickwork, tuckpointing, and chimney and concrete solutions. He states: "My work offers a rare combination of cultural preservation, economic stimulation, and environmental responsibility – goals that are at the heart of national development strategies."

B. EB-2 Eligibility

In response to SCOPS' request for additional evidence (RFE), the Petitioner claimed – and SCOPS agreed – that he qualifies for EB-2 classification as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act. SCOPS, however, did not consider whether his proposed job requires an advanced degree professional.

The term "profession" means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), i.e., architect, engineer, lawyer, physician, surgeon, or teacher in an elementary or secondary school, college, academy, or seminary. 8 C.F.R. § 204.5(k)(2). "Profession" also refers to "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." *Id.*

The term "advanced degree" means:

> Any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

Id.; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 F. App'x 907, 909-10 (11th Cir. 2014) (holding that USCIS' definition of "advanced degree" is not contrary to the Act's plain language).

The Petitioner appears to have demonstrated his possession of an advanced degree equivalent in the form of a bachelor's degree followed by at least five years of progressive experience in his field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree"). But "[m]ere possession of an advanced degree or its equivalent is not sufficient for establishing . . . eligibility for this classification." 6 *USCIS Policy Manual* F.5(A)(3). Rather, the Petitioner also "must demonstrate that the job requires a professional holding an advanced degree or the equivalent." *See* 8 C.F.R. § 204.5(k)(4)(i).

SCOPS did not consider whether the Petitioner's proposed job requires a professional with an advanced degree or its equivalent. We will therefore remand the matter for further consideration. On remand, SCOPS should ask the Petitioner to submit evidence that his proposed job requires an advanced degree professional and afford him a reasonable opportunity to respond.

C. National Importance

As previously indicated, the first prong of our *Dhanasar* framework for determining "national interest" requires the Petitioner to demonstrate that his proposed U.S. work has substantial merit and national importance. The record supports SCOPS' finding that his proposed endeavor has substantial merit. SCOPS also found that his venture would have national importance. But we are unable to meaningfully review that finding because SCOPS' did not explain the reasons for its determination. *Cf.* 8 C.F.R. § 103.3(a)(1)(i) (requiring an officer to "explain in writing the specific reasons for denial").

Under these circumstances, we will withdraw SCOPS' national importance finding and remand the matter so that SCOPS may enter a new decision explaining the specific reasons for its determination. If favorable, the new decision should explain how the Petitioner's specific endeavor has the potential to advance the masonry field, generate substantial economic benefits, or broadly enhance societal welfare. *See Matter of Dhanasar*, 26 I&N Dec. at 889; *see generally* 6 *USCIS Policy Manual* F.5(D)(1).

III. CONCLUSION

SCOPS neither properly considered the Petitioner's EB-2 eligibility as an advanced degree professional nor explained its favorable national importance finding.

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