U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40999761

Date: MAR. 02, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks employment-based second preference (EB-2) 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. SCOPS dismissed the Petitioner's subsequently filed combined motion to reopen and reconsider. The Petitioner now appeals SCOPS' dismissal of the combined motions. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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

- 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.

As a preliminary matter, we note that the Petitioner does not appeal SCOPS' December 9, 2022 denial of the Form I-140 petition. Rather, she appeals only SCOPS' September 3, 2025 dismissal of her combined motion to reopen and reconsider. In the September 2025 decision, SCOPS did not affirm the prior denial but rather, SCOPS concluded that the motions did not meet the applicable requirements. Therefore, the question before us on appeal is whether SCOPS erred in dismissing the combined motions.

Upon review of the Petitioner's motion to reopen, the Petitioner provided additional articles and evidence in support of her eligibility for a national interest waiver, but SCOPS determined that her motion did not meet the requirements of a motion to reopen. The appeal before us does not address SCOPS' determination that her motion did not meet the requirements for a motion to reopen. Instead, on appeal, the Petitioner reargues that she is eligible for the underlying petition and references the evidence submitted with the initial petition. As a result, she has waived that issue and we will not address it further. Any argument a filing party does not raise on appeal is deemed waived. *Matter of C-A-R-R*, 29 I&N Dec. 13, 18 (BIA 2025).

Also on appeal, the Petitioner argues that SCOPS should have applied a cumulative totality of the evidence analysis of the underlying petition. She contends that SCOPS should have reevaluated all previously submitted evidence to reconsider the merits of her national interest waiver. However, the issue before us is not whether the underlying petition should have been approved but whether SCOPS correctly dismissed the motion to reconsider.

While we acknowledge the Petitioner's one sentence stating that SCOPS "should have considered all evidence cumulatively and applied the totality-of-evidence standard mandated by *Chawathe* and *Dhanasar*, rather than dismissing the motion on a narrow procedural ground," this argument does not establish that the prior decision was based on an incorrect application of law or policy and that it was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner did not specifically and sufficiently articulate why SCOPS' prior decision dismissing her combined motion, as opposed to the denial of the underlying petition, was based on an incorrect application of law or USCIS policy. The Petitioner's general assertion that SCOPS failed to properly apply the preponderance of the evidence standard by dismissing critical pieces of evidence and not reviewing the evidence in its totality, also does not persuade us that SCOPS' decision was incorrect.

The Petitioner has not demonstrated that SCOPS' prior decision dismissing the combined motion to reopen and reconsider was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

As explained above, the Petitioner has not shown that SCOPS should have granted the combined motion to reopen and motion to reconsider. Because the Petitioner has not overcome SCOPS'

September 2025 decision dismissing those motions, we will not directly address the December 2022 denial or the merits of the underlying petition.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.