U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41694351

Date: MAR. 2, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a business owner intends "to promote real estate and economic development in the United States through new businesses and investments." He 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 EB-2 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 the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the analysis below.

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)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *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 also 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 are 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.

II. ANALYSIS

As stated above, the denial was based solely on the conclusion that the Petitioner did not establish that he meets regulatory criteria as a member of the professions holding an advanced degree. However, in making that conclusion, SCOPS did not offer a complete analysis or adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Citing 8 C.F.R. § 204.5(g)(1), SCOPS determined that the Petitioner did not provide sufficient evidence showing that he had at least five years of progressive post-baccalaureate experience in his specialty. Although SCOPS acknowledged that the Petitioner submitted support letters and evidence showing that he was founder and owner of a business, SCOPS deemed such evidence insufficient as it did not meet the following provisions of 8 C.F.R. § 204.5(g)(1):

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

SCOPS relied solely on the above segment of the regulation to the exclusion of the remaining portion of the same regulation, which states the following:

> If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The regulation at 8 C.F.R. § 204.5(g)(1) allows USCIS to consider "other documentation" in instances where the specified types of evidence, i.e., letters from former or current employers or trainers, is unavailable.

Importantly, the Petitioner indicates that he acquired his post-baccalaureate experience as a self-employed entrepreneur "in the fields of real estate development, construction, and property management," but it is unclear whether SCOPS adequately considered the Petitioner's claim and supporting evidence. The record shows that while the Petitioner did not provide letters from current or former employers or trainers, he provided "other evidence," including letters from past business associates, in support of his claim that he has at least five years of progressive post-baccalaureate experience in his specialty.

Prior to determining that the Beneficiary did not qualify as a member of the professions holding an advanced degree, SCOPS did not analyze the Petitioner's submission of "other evidence" or explain why doing so was not necessary in this instance. As such, SCOPS did not offer a complete discussion

of the supporting evidence, and we will therefore withdraw SCOPS' decision and remand the matter for further consideration.

In addition, SCOPS should review the evidence to determine whether the Petitioner met the requirements of the analytical framework set forth in *Dhanasar,* which requires the Petitioner to demonstrate that: (1) his endeavor "to promote real estate and economic development in the United States through hew businesses and investments" has substantial merit and national importance, (2) he is well-positioned to advance the endeavor, and (3) on balance, waiving the job offer requirement would benefit the United States. If warranted, SCOPS may wish to request further evidence or clarification and allow the Petitioner to submit such evidence within a reasonable period.

Because the Director's analysis was deficient, we remand for SCOPS to properly apply the *Dhanasar* framework to the facts in the record, and for entry of a new decision.

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