U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 41000583

Date: MAR. 3, 2026

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an operator/franchisor of restaurants serving [redacted] and Asian-inspired cuisine, seeks to employ the Beneficiary to lead its proposed expansion across the United States. The company requests his 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 the need for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of the U.S.-worker protections would be "in the national interest." *Id.*

Service Center Operations (SCOPS) denied the petition. SCOPS found the Beneficiary eligible for EB-2 classification and that the proposed endeavor has "substantial merit." SCOPS also determined that the Beneficiary is "well positioned" to advance the venture. But SCOPS concluded that the company did not demonstrate that the endeavor has "national importance" or that, on balance, a waiver would benefit the United States. On appeal, the Petitioner contends that SCOPS disregarded "vast swaths of 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 agree with SCOPS that the company did not establish the claimed national importance of the proposed endeavor. We will therefore dismiss the appeal.

## I. LAW

To demonstrate eligibility for national interest waivers, petitioners must first establish beneficiaries' qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or as aliens of "exceptional ability" in the sciences, arts, or business. *See* section 203(b)(2)(A) of the Act. To protect jobs for U.S. workers, this immigrant visa category generally 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 and 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 beneficiaries qualify for EB-2 classification as advanced degree professionals or aliens of exceptional ability, petitioners may warrant waivers of the job-offer and labor-certification requirements by demonstrating that:

- The proposed U.S. work has "substantial merit" and "national importance;"
- The beneficiaries are "well positioned" to advance the intended endeavors; and
- On balance, waivers of the job-offer and 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 Beneficiary and the Proposed Endeavor

The record shows that U.S. universities awarded the Beneficiary a bachelor of science degree in advertising/public relations, and master of science degrees in entrepreneurship/innovative ventures and marketing analytics. He [redacted] and served as its marketing manager until 2021. He worked as a marketing associate for another company for about a year, before returning to the Petitioner in 2022 as a partner/pricing analyst.

The Petitioner owns and operates restaurants serving "handcrafted" [redacted] and Asian-inspired cuisine, including poke bowls, sushi burritos, ramen, and rice bowls.[1] The company has 13 corporate-owned restaurants in the northeastern United States and 39 other U.S. franchise restaurants. The company states that, in the next five years, the Beneficiary would lead its expansion plan, including adding 61 franchise restaurants. The company states that the new restaurants would create jobs for U.S. workers and benefit local economies, particularly economically depressed areas, by generating tax revenues and increasing business in related industries such as supply chain management, logistics, and agricultural sourcing. The company projects that its five-year expansion would more than double its total revenues, from about $25 million to $64 million.

The Beneficiary described his partner/pricing analyst role with the Petitioner as "multifaceted, focusing on strategic growth, pricing analysis, franchise development, and supply chain optimization." He stated that his duties would include overseeing the growth of franchise operations, leading "pitch" meetings and negotiations with prospective franchise owners, and developing and refining franchisee training programs.

[1] The Petitioner submitted a copy of a market analysis report stating that [redacted], also known as [redacted], originated in [redacted] The report indicates that [redacted] can come in a variety of flavors and is served cold with [redacted] in it.

The record supports SCOPS' findings that:

- the Beneficiary qualifies for EB-2 classification as an advanced degree professional; and
- the proposed endeavor has substantial merit.

We will next review SCOPS' determination regarding the proposed endeavor's claimed national importance.

B. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* Also, "[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.

> Ultimately, if the evidence of record demonstrates that the person's proposed endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance.

6 *USCIS Policy Manual* F.5(D)(3).

On appeal, the Petitioner contends that SCOPS disregarded a significant amount of evidence. At one point, the decision states that "the company is not yet formed and does not have a physical location." The Petitioner notes that the record shows that it has been operating for about 10 years and has more than 50 locations. The company states: "Such a gross mischaracterization of the submitted evidence suggests the reviewing officer either ignored or did not understand the vast majority of evidence submitted with the case."

Also, in a three-paragraph section including the statement discussed above, the decision finds insufficient evidence that the Petitioner would do business in a "HUBZone," a historically underused business area designated by the federal government. *See* U.S. Small Bus. Admin., "HUBZone Program," www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program. The Petitioner maintains that its endeavor would benefit economically depressed areas. *See Matter of Dhanasar*, 26 I&N Dec. at 890 ("An 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.") (emphasis added). But the company notes that it never claimed it has or would do business in a HUBZone.

USCIS "must explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i). A denial must provide a party with "a fair opportunity to contest the determination on appeal" and allow for meaningful appellate review. *See generally Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (in

the context of a motion to reopen in deportation proceedings, discussing a denial's requirements). Here, SCOPS' denial meets these requirements. Despite the three paragraphs discussed above, the decision indicates that SCOPS otherwise considered and understood the case's evidence. For example, the decision correctly states the Petitioner's establishment in 2015 and accurately describes the proposed endeavor. Also, the decision specifies its denial reasons, finding insufficient evidence of national implications of the claimed jobs and economic benefits the endeavor would generate. Thus, despite the erroneous three-paragraph section, the record indicates that the decision provided the Petitioner with a fair opportunity to challenge the decision and to obtain meaningful appellate review.

The Petitioner contends that its proposed endeavor would directly and indirectly create thousands of jobs for U.S. workers. The company estimated that, by the end of its expansion's fifth year, its headquarters and corporate-owned stores would employ 737 workers and its franchised stores would employ 1,900 people. The company also claims that the venture would create 2,542.1 indirect jobs in related industries. The Petitioner notes that SCOPS' decision discusses the projected 737 workers in the company's corporate-owned stores but does not mention franchise employees or indirect jobs. Further, the company argues that, because "many" of the new jobs would be in economically depressed areas, its undertaking "may well be understood to have national importance." *See Matter of Dhanasar*, 26 I&N Dec. at 890 (("An 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.") (emphasis added).

We will first clarify the Petitioner's projections. The company estimates that, after its five-year expansion, it would employ 737 corporate workers. Its written plan indicates that it already employs 299 corporate workers. Thus, the proposed expansion would add 438 corporate workers. Similarly, the company projects that, after expansion, it would have 100 franchise restaurants employing 1,900 people. A letter from its chief executive officer (CEO) states that the company's franchise restaurants have at least 19 workers. Thus, based on the letter, the company's current 39 franchises appear to already employ at least 681 people. Thus, the expansion would add about 1,219 franchise workers.

Further, to calculate indirect jobs, the Petitioner used a formula from an economic research group stating that the addition of 100 direct jobs in the food services industry creates 96.4 indirect jobs in related industries. The company reaches the figure of 2,542.1 indirect jobs based on total post-expansion corporate and franchise jobs of 2,637. But, as previously indicated, the record indicates that the company already has 299 corporate workers and 681 franchise workers, positions that presumedly have already generated indirect jobs. Thus, the expansion would appear to add 1,675 corporate and franchise jobs and, under the policy group's formula, generate 1,614.7 indirect jobs. Therefore, in total, the Petitioner's five-expansion would appear to create 3,289.7 new jobs.

The Petitioner's creation of more than 3,200 direct and indirect U.S. jobs over the next five years seems impressive. But the record indicates that almost half of the direct jobs would be part-time in nature. The company's written plan estimates that about half of the 653 total servers at the company's corporate-owned restaurants at the end of the five-year expansion would work part-time.[2] Also, the company's CEO stated that each franchise restaurant would employ at least one owner, one manager, and 17 full- and part-time servers. The company has not identified how many employees would work

[2] The plan states that servers take customer orders, serve food and beverages, and process payments.

part-time, or their number of hours. Thus, assuming that about half the franchise servers – like the company's corporate employee servers – would work part-time, most of the new direct jobs generated by the Petitioner's expansion would be for servers and about half of them would work part-time. The record does not indicate how many hours the company's part-time servers typically work. With the record lacking accurate estimates, the servers' part-time hours could be minimal. The company has not explained the national significance of the proposed direct jobs, and, without further information, we cannot determine the significance of those jobs. *See generally* 6 *USCIS Policy Manual* F.5(D)(3) ("[P]etitioners should submit … supporting documentary evidence to establish that the endeavor is of national importance.") Also, the record does not indicate whether part-time direct jobs would generate the same level of indirect jobs or whether the indirect jobs created would be full- or part-time. Thus, questions regarding the significance of the Petitioner's projected job creation remain. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies of record with objective, independent evidence).

The Petitioner argues that "many" of the jobs created would employ people in economically depressed areas. *See Matter of Dhanasar*, 26 I&N Dec. at 890 (("An 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.") (emphasis added). Based on an index from a public policy organization, the company contends that it operates four restaurants in economically "distressed" zip codes and 12 eateries in economically "at risk" zip codes. The company states that the Beneficiary's "demonstrated success in expanding [the company's] stores to the aforementioned areas shows that he is indeed committed to improving communities in economic distress through his endeavor." The company also contends that it has entered into franchise agreements to establish two new restaurants in economically "distressed" zip codes: one in [redacted] Washington; and the other in [redacted], Georgia.

The Petitioner, however, has not demonstrated that the 12 economically "at risk" zip codes have importance under *Dhanasar* as "economically depressed areas." The record does not indicate what "at risk" zip codes signify or the difference between "at risk" and "distressed" zip codes. Moreover, copies of the franchise agreements call for the establishment of new restaurants in [redacted] and [redacted] But neither agreement specifies that the restaurants would do business in the economically "distressed" zip codes for those cities. Further, the copy of the [redacted] agreement does not indicate that the prospective franchise owner signed the document. Thus, the record does not sufficiently support the Petitioner's claim that it would create "many" jobs in economically depressed areas. *See generally* 6 *USCIS Policy Manual* F.5(D)(3) ("The analysis considers whether the petition contains substance that explains and substantiates how working in the proposed endeavor meets the national importance standard.")

Also, *Dhanasar*'s phrase "significant potential to employ U.S. workers" means "at a level that is significant with respect to the population and economic circumstances of the relevant region." 6 *USCIS Policy Manual* F.5(D)(3). The Petitioner has not demonstrated that a new restaurant's creation of 19 new jobs – almost half of them part-time – within an economically "distressed" zip code satisfies that level of significance. The company also does not indicate the salaries or wages of the new jobs to evidence the significance of additional area wages.

The Petitioner contends that SCOPS erred in discounting industry articles and reports that the company submitted. The company argues that, although the documents do not focus on its specific proposed endeavor, they show "the unmet demand for Asian cuisine and [redacted]" across the United States. The company's CEO stated that a market research study found that 45% of all U.S. Asian restaurants operate in California, New York, Texas, New Jersey, and Washington, while Asian restaurants account for only 6% of eateries in Montana, North Dakota, South Dakota, and West Virginia. The CEO stated:

> This clearly highlights a gap in the Asian restaurant industry; where many states across the U.S. have few Asian restaurants to meet the increasing demand. [The Beneficiary's] proposed endeavor will meet this gap by operating dozens of restaurants across the U.S., particularly in states with unmet demand.

But the study does not indicate an "unmet demand for Asian cuisine and [redacted]" States with lesser percentages of Asian restaurants may simply have less demand for Asian food and beverages than other states. Contrary to the Petitioner's contentions, the market research study does not demonstrate U.S. demand for the company's restaurants.

The Petitioner also contends that it has introduced significant innovations in its industry. The company argues that an analysis found that new flavors account for most of the innovation in the U.S. [redacted] market. The company states that its "innovations have gone and will continue to go beyond simply adding new flavors." For example, the CEO stated that one of the company's [redacted] offers "a unique, [redacted] appearance." He states that the company also offers unique and customizable food, such as sushi burritos.

The record, however, lacks sufficient independent evidence that the products the Petitioner cites represent nationally important innovations in its industry. *See* 6 *USCIS Policy Manual* F.5(D)(3) ("[P]etitioners should submit … supporting documentary evidence to establish that the endeavor is of national importance.")

The Petitioner further argues that the proposed endeavor "will promote cultural exchange and enhance social appreciation for Asian culinary traditions" and "create thousands of flexible job opportunities for college students," who might otherwise drop out of school because of financial strains. The record, however, lacks sufficient evidence that the proposed expansion would produce those results in a nationally important way.

The Petitioner has not sufficiently demonstrated that the proposed endeavor has national importance. We will therefore affirm the petition's denial.

C. The Remaining *Dhanasar* Requirement

To obtain a national interest waiver, a petitioner must satisfy all three prongs of our *Dhanasar* analysis. *Matter of Dhanasar*, 26 I&N Dec. at 889. Because the Petitioner did not demonstrate the claimed national importance of his proposed endeavor under *Dhanasar*'s first prong, we need not review SCOPS' determinations regarding the remaining two prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

## III. CONCLUSION

The Petitioner established the Beneficiary's eligibility for EB-2 classification and that the proposed endeavor has substantial merit. The company, however, did not demonstrate that the venture has national importance. We will therefore affirm the petition's denial.

**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.