U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39984109

Date: MAR. 6, 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 or an alien of exceptional ability, 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 the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 establish eligibility for a national interest waiver, petitioners must 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 petitioners demonstrate:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

[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).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing, the Petitioner did not provide a specific proposed endeavor but instead submitted a statement broadly claiming:

> . . . I plan to continue my studies in the USA and become a brilliant professional pertinent to my area . . . .
>
> . . . .
>
> . . . Through my knowledge, experience, and hard work, I want to make unique and significant contributions to the American society and the well-being and happiness of American citizens . . . .
>
> . . . .
>
> I would love nothing more than to contribute my talent and ability as a Lawyer, to the benefit of the United States of America has become my true home – and I would be honored and privileged to give back to the community that made me feel safe, powerful and free.
>
> . . . .
>
> . . . I have been actively networking, and I have great interest from U.S. companies who want to contract me as a Lawyer . . . .

The Petitioner did not provide any particulars and did not demonstrate that continuing his studies and broadly seeking employment to be contracted as a lawyer for U.S. companies were sufficient to satisfy *Dhanasar's* requirement of a specific proposed endeavor. *Id.* at 889. In response to SCOPS' request for evidence (RFE), the Petitioner pivoted and the cover letter asserted:

> . . . According to his statement, [the Petitioner] plans to establish a business dedicated to legal consulting and educational services. This business model inherently requires a team of professionals, including paralegals, administrative staff, and legal researchers, thereby directly creating employment opportunities.
>
> . . . .
>
> . . . By setting up his business in an economically depressed area, he will address the legal service gap in these communities, ensuring that individuals and small businesses have access to essential legal assistance. . . .
>
> . . . .

> In addition to his legal practice, [the Petitioner] is committed to continuing his research in the field of jurisprudence. . . .
>
> . . . .
>
> Furthermore, [the Petitioner's] business will offer educational services, likely including training programs and workshops on various legal topics. . . .

On appeal, the Petitioner's brief maintains that he "proposes to operate a legal-consulting and legal-education enterprise focused on (a) anti-corruption governance and compliance; (b) access-to-justice gaps in underserved regions ("legal deserts"); and (c) law-and-technology integration for lawful investigative/analytic methods."

The Petitioner did not initially indicate any intention to own and operate a business. While the RFE cover letter asserted that "[a]ccording to his statement, [the Petitioner] plans to establish a business dedicated to legal consulting and educational services," the record does not support this assertion.[2] The Petitioner's initial statement made no references to establishing and operating a legal consulting and educational services business. In fact, as referenced above, the Petitioner's original statement indicated that he wanted to continue his studies and practice as a lawyer, claiming that businesses had interest in contracting him as a lawyer without any mention of a legal consulting or educational services business, including conducting research in the field of jurisprudence.[3] The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening, owning, and operating his own business to provide consulting, education, and research.

Moreover, as he materially changed his proposed endeavor from initial filing to the RFE and continuing on appeal, the Petitioner abandoned his initial proposed endeavor. The Petitioner did not establish that he offered a specific proposed endeavor as required under *Dhanasar*, 26 I&N Dec. at 889. Without a specific proposed endeavor, a determination cannot be made whether the endeavor has substantial merit[4] and national importance (prong one), that the Petitioner is well-positioned to advance the endeavor (prong two), and on balance, waiving the job offer requirement would benefit the United States (prong three).[5]

---

[2] The Petitioner did not provide a separate statement in his RFE response rather than a cover letter prepared by his counsel; the record only contains his initial statement.

[3] The Petitioner did not identify any purported businesses.

[4] Although SCOPS determined the Petitioner's proposed endeavor has substantial merit, we withdraw that determination because the record does not reflect a specific proposed endeavor.

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

As the Petitioner has not offered a specific proposed endeavor as required under *Dhanasar*, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.[6] The appeal will be dismissed for the above-stated reasons, with each considered as an independent and alternate basis for the decision.

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.

[6] We also need not review SCOPS' favorable determination regarding the Petitioner's eligibility for the underlying immigrant classification as a member of the professions holding an advanced degree. *See INS v. Bagamasbad*, 429 U.S. at 25.