U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41734520

Date: MAR. 10, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a neuroscience researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

SCOPS denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

To qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either an advanced degree professional or an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, the petitioner must then establish that the alien merits 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The alien is well positioned to advance their proposed endeavor; and

[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).

- On balance, waiving the job offer requirement would benefit the United States.

The Petitioner earned a doctorate in neuroscience in Italy in 2019. When he filed the petition in December 2023, the Petitioner was in the United States in H-1B nonimmigrant status, working as a postdoctoral researcher at [redacted]

The record demonstrates that the Petitioner qualifies as a member of the professions holding a foreign degree equivalent to a U.S. Ph.D. in neuroscience. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner described his proposed endeavor:

> I plan to further the National Interest of the United States by contributing to the development of treatments for mental conditions that involve an issue with decision-making behavior. This will be done by developing a better understanding of the decision-making process and streamlining the use of advanced technology to detect and manipulate the activity of neurons. I have already started advancing these two goals, as I was recently given a research grant by the [redacted] In this project, I will work to develop a protocol for the detection and manipulation of the neural activity of a behaving animal during economic choices. This work can provide an innovative platform to study decision-making behavior and greatly advance our understanding of dysfunctional behaviors.

The Petitioner stated that his "research can advance the development of treatments for mental conditions in which defective decision-making is observed, such as fronto-temporal dementia and obsessive-compulsive disorders."

SCOPS determined that the Petitioner had established the substantial merit of the proposed endeavor, but otherwise had not satisfied any other elements of the *Dhanasar* national interest test.

We conclude that the Petitioner has established the national importance of his proposed endeavor. The record shows that the Petitioner has played a significant role in federally funded research that produces new insights into cognitive functions. This research has been widely disseminated through publication in major scholarly journals.

We also conclude that the Petitioner has shown that he is well positioned to advance the proposed endeavor. The Petitioner has a doctorate in a field relevant to the proposed endeavor; a history of publishing heavily cited research closely related to that endeavor; and ongoing employment at a reputable institution involving the research described in that endeavor.

The third *Dhanasar* prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the alien's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are

available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. at 890-91.

SCOPS' discussion of the third *Dhanasar* prong revolves largely around the conclusion that the Petitioner had not satisfied the first two prongs. Because we have determined that the Petitioner has satisfied the first two *Dhanasar* prongs, SCOPS should again review the Petitioner's proposed endeavor in the context of the third *Dhanasar* prong, taking the above conclusions under consideration.

Also, we note that SCOPS' denial decision includes multiple references to "public records." SCOPS did not identify these materials with any specificity or detail, and there is no indication that SCOPS incorporated those materials into the record. SCOPS did not provide the Petitioner with prior notice that this information would be used in the decision. Generally, a decision must be based only on information in the record and disclosed to the petitioner, after providing the petitioner with an opportunity to respond. *See* 8 C.F.R. § 103.2(b)(16)(i) ("If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information."); *see also* 8 C.F.R. § 103.2(b)(16)(ii) ("A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section."). If SCOPS intends to rely on such materials in rendering a new decision, the regulations require SCOPS to incorporate those materials into the record and allow the Petitioner an opportunity to respond to that information before SCOPS renders its decision.

Because the Petitioner has satisfied the first two prongs, we remand the matter for SCOPS to consider the foregoing and to render a new decision, focusing on the remaining question of whether the Petitioner has established that, on balance, the United States would benefit from waiving the job offer requirement.

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