U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41954974

Date: MAR. 18, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a tattoo artist, seeks employment-based second preference (EB-2) immigrant classification as an individual 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 that the record did not establish that the Petitioner qualifies for classification as an individual of exceptional ability. 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

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,[2] grant a national interest waiver if the petitioner demonstrates that:

- 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is a tattoo artist seeking to demonstrate eligibility for the EB-2 classification as an individual of exceptional ability. He asserts that he meets the following three evidentiary criteria: an official academic record relating to the area of exceptional ability, membership in a professional association, and recognition for achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(A),(E), and (F). SCOPS concluded that the Petitioner only met one of the three required criteria; evidence of membership in a professional association; and therefore, did not establish eligibility for the EB-2 classification. 8 C.F.R. § 204.5(k)(3)(ii)(E). As the Petitioner did not establish eligibility for EB-2 classification, SCOPS determined he did not qualify for a national interest waiver. On appeal, the Petitioner contends that he meets the additional two claimed criteria of an official academic record relating to the area of exceptional ability and recognition for achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F). Further, he claims the decision constitutes a breach of due process as SCOPS did not issue a request for evidence (RFE) and that the denial is fundamentally flawed as SCOPS did not analyze the record as it relates to *Matter of Dhanasar*. Upon review, we conclude that SCOPS properly denied the petition within their discretion. We further conclude that the record does not demonstrate that the Petitioner meets at least three of the six evidentiary criteria and therefore does not qualify for EB-2 classification as an individual of exceptional ability.

As stated above, SCOPS denied the petition without first issuing an RFE and on appeal the Petitioner contends that this is a breach of due process. The regulation at 8 C.F.R. § 103.2(b)(8)(iii) states that "[i]f all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the benefit request for ineligibility; request more information or evidence from the applicant or. . . notify the applicant or petitioner of its intent to deny the benefit request. . . ." Although this regulation gives USCIS the discretion to issue an RFE, neither the Act nor the regulations compel us to do so. Here, SCOPS had the discretion to deny the petition without issuing an RFE as they determined the evidence already submitted established that the Petitioner was ineligible for EB-2 classification. *See generally* 1 *USCIS Policy Manual* E.6(F)(1),

[2] *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).

https://www.uscis.gov/policy-manual. Therefore, the Petitioner has not established SCOPS erred in denying their petition without issuing an RFE.[3]

Next, the Petitioner claims that SCOPS' denial is fundamentally flawed as it does not address the Petitioner's eligibility for a national interest waiver under the three prongs of the *Dhanasar* framework. SCOPS determined the record did not establish the Petitioner's eligibility for EB-2 classification. The decision states, "[a]s the petitioner has not established that he qualifies for the underlying EB-2 visa classification, he has not established that he is eligible for or otherwise merits a national interest waiver." The Petitioner must first establish he qualifies for the underlying EB-2 classification. As SCOPS determined that the Petitioner did not meet the required criteria to establish eligibility as an individual of exceptional ability, SCOPS properly concluded that the Petitioner is ineligible for a national interest waiver. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. Therefore, the Petitioner has not established SCOPS erred as it relates to their determination that the Petitioner is ineligible for a national interest waiver.

As stated above, the Petitioner asserts that he meets three of the six evidentiary criteria; an official academic record relating to the area of exceptional ability, membership in a professional association, and recognition for achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(A),(E), and (F). The first of the three criteria requires "an official academic record showing they have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." 8 C.F.R. § 204.5(k)(3)(ii)(A). The record includes the Petitioner's diploma, transcripts, and an academic evaluation establishing the Petitioner has the equivalent of a U.S. bachelor's degree in architecture. SCOPS determined that although this evidence establishes the Petitioner has a degree from a university, the record does not establish that the Petitioner's degree in architecture is in the area of exceptional ability; tattoo artistry. The Petitioner does not provide additional evidence to establish that the two fields are related, therefore, we agree that this evidence does not meet the criterion.

On appeal, the Petitioner contends that the record also includes various certificates "that further demonstrate his advanced skills and sustained commitment to excellence in his field." The record contains eight certificates from various courses the Petitioner completed and tattoo workshops he attended. For example, the record includes, in part, certificates of completion for the "APT" online course, "Bloodborne Pathogens"; the "Domestika" online course entitled "Realistic Portraits in Pencil: light, shadow, and proportion"; and the "udemy" course entitled "Advanced Tattoo Masterclass." The certificates alone do not demonstrate that "APT," "Domestika," or "udemy" qualify as institutions of learning comparable to colleges, universities, and schools. The Petitioner did not support the record with background information or other evidence reflecting status as a college, university, school, or other institution of learning. The Petitioner contends that, "[t]ogether, these materials establish a strong record of formal education and continuous professional development directly related to the petitioner's field of expertise. . . ." However, the record does not establish that he meets the plain language of this criterion as his degree is not in the area of exceptional ability and the record does not

[3] We note the Petitioner had the opportunity to supplement the record on appeal to respond to the deficiencies noted in SCOPS' decision; but they did not.

establish that his certificates are from a college, university, school, or other institution of higher learning.

SCOPS determined that the Petitioner met the criterion of membership in a professional association. 8 C.F.R. § 204.5(k)(3)(ii)(E). Upon review, we conclude that the Petitioner does not meet this criterion. The record contains evidence of the Petitioner's membership in the Alliance of Professional Tattooists (APT). The Petitioner also submitted information about the organization such as its mission, structure, activities, and official bylaws. The term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The record does not establish that membership in APT requires a U.S. bachelor's degree or foreign equivalent. Based on the information provided about membership in the organization, APT membership includes licensed tattoo artists, tattoo studio owners, apprentices and aspiring artists, industry suppliers, and health and legal experts. Although members may hold a U.S. bachelor's degree or its foreign equivalent, it is not a requirement for entry. Therefore, the Petitioner has not demonstrated his membership in a professional association, and we withdraw SCOPS' determination that the Petitioner meets this criterion.

Moreover, the Petitioner has not submitted sufficient evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F). The record contains photographs with captions reflecting that the Petitioner was awarded at two tattoo conventions. While these awards demonstrate personal achievements, they do not establish significant contributions to the industry. For example, the photographs and captions do not provide information on the tattoo competitions and how being awarded results in a significant contribution to the tattoo industry. Likewise, the letters of recommendation also do not provide evidence of significant contributions to the tattoo industry. For instance, in the letter written by A-C-B-, the author highlights the contributions the Petitioner made to their tattoo studio by enhancing their customer service. The author praises the Petitioner's work stating, "[t]hanks to his initiative and dedication, the studio achieved its goals of increasing revenue and audience, in addition to strengthening its reputation in the market." The record contains other letters of recommendation that similarly speak to the Petitioner's positive impact on their companies. While these letters detail the contributions the Petitioner made to these specific employers, the letters do not establish significant contributions to the tattoo industry. Again, while this evidence demonstrates the Petitioner's personal achievements, such earning awards in competitions or the impact he has had on specific employers, it does not demonstrate that these personal achievements constitute significant contributions to the tattoo industry, as a whole.

For the reasons given above, the evidence does not establish that the Petitioner meets the eligibility requirements as an individual of exceptional ability and therefore does not meet the requirements for EB-2 classification. Because the Petitioner has not established that he meets the minimum required criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework, we reserve our opinion regarding these issues. Because the Petitioner is ineligible for a national interest waiver, we need not reach, and therefore reserve, all three *Dhanasar* prongs. *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

We conclude that the Petitioner has not established by a preponderance of the evidence that he qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion.

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.