U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37315130

Date: MAY. 01, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an early childhood educator and entrepreneur, 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

SCOPS denied the Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established her underlying eligibility for EB-2 classification as an advanced degree professional, but that she did not establish she merited a national interest waiver. 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.

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

- The proposed endeavor has both substantial merit and national importance;

[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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

SCOPS determined that the Petitioner is an advanced degree professional and therefore qualifies for the underlying EB-2 visa classification. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner's proposed endeavor is to establish child daycare centers in Florida, Georgia, and North Carolina. SCOPS denied the Petitioner's national interest waiver, concluding that the Petitioner had not established her proposed endeavor was nationally important under the first prong of the *Dhanasar* analytical framework as required for the waiver. As the Petitioner did not establish that she met the requirements of the first *Dhanasar* prong, SCOPS declined to address whether she met the criteria under the remaining second and third *Dhanasar* prongs, namely that she was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. *Id.* On appeal, the Petitioner claims that the denial of her Form I-140 constitutes a violation of due process and the Administrative Procedures Act because SCOPS failed to analyze her eligibility for the waiver under all three of the *Dhanasar* prongs and ignored key evidence. The Petitioner further claims that her proposed endeavor is nationally important and that she overall merits a national interest waiver.

Initially we address the Petitioner's claim that SCOPS erred by failing to analyze her eligibility under all three *Dhanasar* prongs. As noted, SCOPS determined the Petitioner did not establish she met the requirements of the first *Dhansar* prong. SCOPS was not required to address the remaining *Dhanasar* prongs to render its decision as the determination that she did not satisfy prong one rendered her ineligible for the requested benefit. *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).

We also acknowledge the Petitioner's claim that SCOPS ignored evidence regarding projections for job creation and tax contributions as well as on the societal benefits of accessible childcare. However, the SCOPS decision, as it relates to prong one of the *Dhanasar* framework, specifically acknowledged the submission of the Petitioner's business plan and addressed the employment and revenue projections in that plan. SCOPS furthermore specifically "acknowledge[d] the evidence reflecting the importance of holistic early childhood education," as well as "industry reports and articles…[that] emphasize the importance of social and emotional development in children." The Petitioner's claim that SCOPS disregarded relevant evidence is therefore without merit.

We now turn to whether the record supports the Petitioner's assertion on appeal that she has established her eligibility for a national interest waiver and, in particular, that her proposed endeavor is nationally important as required under the first *Dhanasar* prong.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact, and "look for broader implications." For instance, we noted in *Dhanasar* that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[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.

SCOPS concluded that the Petitioner's proposed endeavor had substantial merit under the first *Dhanasar* prong. We agree. However, for the reasons discussed below, we also agree with SCOPS that the Petitioner has not established eligibility for a national interest waiver under the *Dhanasar* analytical framework, as she has not established the national importance of her proposed endeavor.

The Petitioner provided, in part, business plans wherein she stated that her proposed endeavor is to create and direct child daycare centers that provide "interactionist thinking and language classes as well as sports, dance, and art activities for children aged from six months to four years old." The child daycare centers intend to target "individuals who due to their jobs, are unable to take care of their children," as well as certain legal entities. The Petitioner plans to establish her company in [redacted] Florida and expand into other cities in the United States. She claims she will employ up to 15 employees, including herself, in the first year of operation, and 75 employees by year five of operations.

Additionally, the Petitioner submitted an expert opinion letter that discusses the importance of childcare and the childcare industry in the United States, as well as the services the Petitioner's company will provide, and generally claims the Petitioner's proposed endeavor is nationally important because it will contribute to the national economy through the employment of childcare workers, paying taxes, and improving labor market conditions for employed parents; enhance social welfare and cultural enrichment as early childhood education is associated with gains in language, literacy, and math skills; and because early childhood education is the subject of federal government initiatives. The Petitioner also submitted five letters of recommendation from former coworkers and professional acquaintances that generally speak to her character and professional experience. Finally, the Petitioner submitted articles relating to entrepreneurship and the role of immigrants in entrepreneurship.

We acknowledge the evidence of the Petitioner's education and experience in the field of early childhood education, including the information contained in her resume and letters of recommendation. This evidence, however, relates to whether the Petitioner is well positioned to advance her proposed endeavor under *Dhanasar* prong two, rather than whether her proposed endeavor is nationally important. Similarly, we note the articles she provided that discuss the importance of the entrepreneurship and immigrant entrepreneurs, and the expert opinion letter that addresses the importance of childcare and the childcare industry. Our focus in assessing national importance, however, is on the specific endeavor that the Petitioner proposes to undertake and its

prospective impact rather than the importance of entrepreneurship generally or the industry or profession in which the individual will work. *See id.* at 889.

Here, the Petitioner has not offered sufficient information and evidence to demonstrate her endeavor to create, and to work as the director of, child daycare centers would extend beyond her clients, or that the services her child daycare centers will provide offer original innovations to advance, or will otherwise have national or global implications in, the field of early childhood education commensurate with national importance. The Petitioner's general assertions in her professional plans, as well as the assertions made in the expert opinion letter, regarding the societal contributions her proposed endeavor may make to its target audiences, including with regards to the availability of early childhood education overall and early childhood education curricula, are furthermore not corroborated in the record to establish the proposed endeavor would have national-level impact or other broader prospective societal impact. Similarly, the letters of recommendation and articles submitted by the Petitioner do not address the specific endeavor or the services the Petitioner would provide through her company as part of her endeavor, nor do they discuss with any specificity the impact or broader implications of those plans to corroborate the scope of educational or societal impact the Petitioner claims would result from her specific endeavor.

Finally, while the Petitioner and the expert opinion letter also generally claim her proposed endeavor would support economic growth through tax revenue generation and create new employment opportunities for childcare workers and parents, the unsupported revenue and employment projections provided and the general conclusions in both the business plans and the expert opinion letter are insufficient to demonstrate that the proposed endeavor would have national-level economic implications through job creation and taxes generated. Also, even if the record showed that the financial projections in the business plans and expert opinion letter regarding revenue growth and job creation are well-founded, they do not establish that the projected revenue or number of jobs expected to be created by the proposed endeavor initially, or over a five-year period, would have *substantial* positive economic effects, particularly in an economically depressed area, or that the proposed endeavor has significant potential to employ U.S. workers. Accordingly, we find the Petitioner has not established that her proposed endeavor is nationally important.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, requiring that she demonstrate her proposed endeavor is nationally important. She therefore has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

As noted above, SCOPS did not address whether the Petitioner was well positioned to advance her proposed endeavor, or 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, as are required under prongs two and three of the *Dhanasar* analytical framework. While the Petitioner claims the failure to address those prongs amounts to an abuse of discretion, SCOPS was not required to address the remaining *Dhanasar* prongs to render its decision as the determination that she did not satisfy prong one rendered her ineligible for the requested benefit. *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). Similarly, since our determination that the Petitioner did not establish her proposed

endeavor is nationally important is dispositive of her appeal, we also decline to reach and hereby reserve any appellate arguments on those issues.

ORDER: The appeal is dismissed.