U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37898714

Date: MAY 08, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an avant-garde pop artist, seeks second preference immigrant classification (EB-2) as an individual of exceptional ability. *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.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner qualified for a national interest waiver. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.[1]

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, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2). An individual 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner demonstrates meeting at least three criteria, USCIS then conducts a final merits determination to

[1] We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar* states that USCIS may, as matter of discretion,[3] 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id.

II. ANALYSIS

SCOPS determined that the Petitioner met at least three of the six criteria in establishing that she was an individual of exceptional ability. SCOPS also found that the proposed endeavor had substantial merit, but not national importance. Consequently, SCOPS concluded that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Upon de novo review, we agree with SCOPS's findings, concluding that the Petitioner's proposed endeavor does not satisfy the national importance element under *Matter of Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the record is dispositive in finding that she is ineligible for the national interest waiver, and we need not address the second and third prongs under the *Matter of Dhanasar* framework.

As explained in SCOPS's decision, the first prong – substantial merit and national importance – focuses on the specific endeavor that the alien proposes to undertake in the United States. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We noted in *Matter of Dhanasar* that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[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.

[3] *See Poursina v. USCIS*, 936 F. 3d 868, 870-76 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature); *see also Flores v. Garland*, 72 F. 4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

The Petitioner intends to work as an "Avant-Garde Pop Artist with Diverse Applications, Including Large Public Spaces and Corporate Collaborations," for her own company. She states that she works with a partner and they "create artwork inspired by the Pop Art Movement and the Street Art Movement. She describes the work as "the harmonious union of two creative minds that transcend the conventional in the realm of plastic arts, reaching a truly unique and captivating level." She further describes her work as follows: "[Our] creations incorporate a unique fusion of elements such as pop art flowers, saturated colors, street art techniques, and black-and-white realism, resulting in an eclectic aesthetic approach. This allows our artworks to appeal to a diverse audience with different artistic tastes. We also incorporate hand embroidery into our paintings, which adds unique depth and texture." When discussing her proposed endeavor, she proffered that the United States "will absolutely benefit" from artists like her, because such artists are "crucial in promoting the revitalization of spaces and strengthening our culture and sense of community." She states that through the arts, artists "can contribute to the economy, innovation, creativity, well-being, culture, and the resilience of the American society." Specifically, she indicates that she plans to "serve businesses, coffee shops, hotels, art galleries, cities, governmental agencies, and the community, while also promoting the U.S. arts and culture, economy, innovation, and creativity."

The Petitioner has submitted recommendation letters from many individuals and entities, including a Brazilian Consul General explaining that the Petitioner provided works of art for free for a temporary exhibit at the Consulate General and demonstrated a sense of responsibility and commitment which greatly contributed to the success of the initiative. A psychologist provided a letter stating that the Petitioner was a member of an artistic duo and had demonstrated extraordinary expertise and innovation in the field of arts and culture. He further stated that the Petitioner's "ability to create engaging, emotionally resonant, and aesthetically magnetic artwork aligns perfectly with the goal of revitalizing spaces and strengthening cultural and community bonds." A brand director for a global beverage distributor who has expressed an interest in working with the Petitioner, after he encountered her work on social media, described the Petitioner as a well-known expert in large-scale projects who is known for her remarkable artistic creations that showcase her exceptional artistic versatility, vibrant colors, energetic compositions, and noteworthy ability for artistic diversification.

An expert opinion letter submitted by A-A-[4], a Professor of Fine Arts, detailed why he believed the Petitioner's proposed endeavor is of national importance. A-A- explained that the long-term goal of the Petitioner is to establish connections with new companies, showcase at art fairs, launch products, and develop philanthropic projects with local organizations to raise funds for social causes. A-A- noted that "data from evidence-based research carried out in the U.S. and worldwide has revealed that creative artists significantly contribute to the economy and societal well-being, with the U.S. creative economy contributing over USD 1.1 trillion to GDP in 2022, supporting 5.2 million jobs and accounting for 4.3 percent of the total GDP." A-A- opined that art will broadly enhance individual and societal welfare such as overcoming depression, workplace pressure, marital unhappiness and psychological issues. He asserts that art is the subject of national initiatives as illustrated by U.S. government support for the Smithsonian, and the National Endowment for the Arts. Finally, A-A- opined that art can have a national and global impact for example using graffiti to transform abandoned spaces; and art can have substantial positive economic effects as shown in 2017 when the U.S. exported nearly USD $30 billion in arts and cultural services, more than it imported. In support of her

[4] We use initials to protect the identity of individuals.

petition, the Petitioner also submitted evidence relating to her employment, artwork, and invitations to participate in future events. Additionally, she presented a portfolio and materials confirming the showing of her work online, in publications, hotels and exhibitions, and on clothing and on merchandise.

On appeal, the Petitioner argues that SCOPS did not apply the preponderance of evidence standard, and overlooked the detailed proposed endeavor, the evidence of individuals wishing to work with the Petitioner in the future, and details of what she would do and who it would benefit. Specifically, the Petitioner contends that SCOPS's analysis contained extraneous language leading the reader to believe that the Petitioner on one hand was an entrepreneur who wished to create jobs in an economically depressed area, while on the other, an employee who wished to provide valuable services to her employer and its clients. She maintains that her "unique art, creativity, talent, as well as the broad and practical application of her artistic expression to benefit the public, cities, and organizations are of national interest to the United States."

Upon de novo review, the record is insufficient to demonstrate that the Petitioner's proposed endeavor satisfies the first prong under *Matter of Dhanasar*. Specifically, the letters of recommendation and other supporting materials discuss the focus of the Petitioner's proposed endeavor, but they fail to establish how her proposed endeavor will likely impact the field of art nationally or how the potential prospective impact has national implications within the field. *See id.*, 26 I&N Dec. at 889. For example, A-A- claims that her proposed endeavor has national importance, but the letter supports the claim with a general discussion of art and its impact on society, without specifically explaining how the Petitioner's proposed endeavor – avant-garde pop artist with diverse applications including large public spaces and corporate collaborations - rises to the level of national importance or how it will likely impact the field of art more broadly. The Petitioner has not established that her proposed endeavor has broader implications for the field. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

Similarly, while the Petitioner claims that through the arts she can contribute to the economy, she has not included sufficient evidence showing the level of economic impact that her proposed endeavor will likely have, including information on the number of jobs it will likely create, the amount of tax revenue it will likely generate, or how it will likely revitalize depressed areas. For example, she describes two phases of her endeavor as an avant-garde pop artist, a short-term and long-term phase. However, neither her short-term nor long-term plans contained any financial projections. Moreover, although on appeal the Petitioner contends that SCOPS's decision leads the reader to believe that the Petitioner's case is about an entrepreneur who wishes to create jobs in an economically depressed area, and an employee who wishes to provide valuable services to her employer and its clients, the Petitioner does not indicate which, if any, of these descriptions fits her aptly. Here, the Petitioner did not establish that her proposed endeavor as an avant-garde pop artist had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner continues to make general claims regarding the positive economic effects of the endeavor, the Petitioner did not sufficiently explain or demonstrate how her particular proposed endeavor would have any projected U.S. economic impact or job creation. Without such evidence, the record does not show any benefits to the U.S. regional or national economy resulting from her services or position would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890. Even if we were to accept that the Petitioner's proposed endeavor will likely have some economic impact, as it is the case with most employment, the Petitioner has not established that "her proposed

endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States." *See Matter of Dhanasar*, 26 I&N Dec. at 890.

We acknowledge A-A-'s claim that the Petitioner's "innovative artistic creations have the potential to revitalize the American arts and culture scene, creating visually captivating album covers, branding elements, and immersive music videos." And that she can "also enhance live performances by designing staged sets, props, and visuals." However, even if we were to conclude that her proposed endeavor has substantial merit, merely working in an important area is insufficient to establish the national importance of the Petitioner's specific proposed endeavor. The relevant question is not the importance of the area in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In this case, for the reasons we have discussed, the Petitioner has not demonstrated the requisite national importance.

Accordingly, we find that the Petitioner has not satisfied the first prong of the *Matter of Dhanasar* framework, and she has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the *Matter of Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Matter of Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.