U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 38159978

Date: MAY 8, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an airline pilot, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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).

SCOPS denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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.

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.

*Id.*

## II. ANALYSIS

The Petitioner proposes to work as an airline pilot and flight instructor in the United States. He asserts that his endeavor will contribute to the aviation industry by helping to ensure a supply of "well-trained pilots and enhancing safety and efficiency in air travel."

### A. EB-2 Classification

With respect to the underlying EB-2 classification, SCOPS determined the Petitioner was eligible for the classification as a member of the professions holding an advanced degree but did so without sufficient analysis. However, conducting further inquiry into the Petitioner's categorical eligibility such as by remanding the matter for SCOPS to issue a request for evidence seeking documentation of a U.S. advanced degree or foreign equivalent or a U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive, post-bachelor's experience in the specialty, or alternatively, evidence supporting eligibility as an individual of exceptional ability in the sciences, arts, or business, would serve no legal purpose. As the Petitioner is not eligible for a national interest waiver for the reasons discussed below, we do not reach and hereby reserve our determination of his eligibility for the underlying classification. *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").

[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).

[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).

B. National Interest Waiver: 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.*

The Petitioner states that he intends to apply the skills and knowledge gained through his professional experience to pursue positions within commercial airline companies, which he believes will benefit from his strong qualifications as both a pilot and instructor. The record includes the Petitioner's certificates, copies of flight logs and pilot's license, letters from employers, expert opinion and recommendation letters, a professional plan, and industry reports and articles.

In denying the petition, SCOPS found that the Petitioner's proposed endeavor has substantial merit. SCOPS concluded, however, that the Petitioner failed to demonstrate the proposed endeavor's national importance, that he is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. Specifically, SCOPS determined that the Petitioner has not demonstrated that his endeavor has a broader impact—beyond his prospective employers/clients, business partners, and affiliates—sufficient to establish its national importance.

On appeal, the Petitioner submits a brief along with previously provided documentation. However, the Petitioner's brief does not address SCOPS' specific reasoning and solely reiterates the same or similar arguments made at the initial stage. The Petitioner asserts that his documents were not "fully analyzed in their entirety." While we acknowledge the Petitioner's claim, his appeal does not specifically identify any erroneous conclusion of law or statement of fact in SCOPS' decision. 8 C.F.R. § 103.3(a)(1)(v). Instead, the Petitioner focuses on his eligibility for a national interest waiver, emphasizing his extensive experience and skills.

We recognize the Petitioner's assertion that he is an experienced pilot; however, that fact alone is insufficient to establish the national importance of the endeavor proposed here. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 890. Although the Petitioner states that his proposed endeavor of working as a pilot and flight instructor will create job opportunities and broadly impact the aviation industry, he has not, for example, sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance.

Moreover, SCOPS' decision adequately addressed the previously submitted evidence and determined that the Petitioner did not demonstrate that he merited a national interest waiver. The Petitioner was therefore given a sufficient explanation of the grounds for denial as required by 8 C.F.R. § 103.3(a)(1)(i). Accordingly, we adopt and affirm SCOPS' decision regarding the discussion of the national interest waiver. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate

adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

C. The Remaining *Dhanasar* Prongs

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

The Petitioner has not established the national importance of his proposed endeavor, and he does not meet the first prong of the *Dhanasar* analytical framework. Consequently, the Petitioner has not demonstrated that he is eligible for or merits a waiver of the job offer and labor certification requirements in the national interest as a matter of discretion.

**ORDER:** The appeal is dismissed.