U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37409005

Date: MAY 9, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a security public consultant, seeks employment-based second preference (EB-2) immigrant classification as an alien 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 Petitioner did not establish that a waiver of the job offer requirement is 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prongs. *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).

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an alien 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 states that he has more than 30 years of experience in public security consulting, including experience as a career military officer with, and as a consultant to, the military police in [redacted] Brazil. He has completed training with the military police academy in Brazil, as well as graduate coursework in ecology and police sciences. He states that he has led initiatives resulting in reduced crime rates and improved community safety. His proposed endeavor is to be a "leading Security Public Consultant or Advisor, offering strategic advice and innovative solutions to law enforcement organizations, schools, universities and private security firms." He states that his specific contribution to creating safer communities in the United States will "focus on the most dangerous criminals and Brazilian offenders" and will include:

- Crime data analysis;
- Policy development and implementation;
- Emergency planning and response;
- Community engagement and policing strategies;

[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).

- Training and capacity building; and
- International security cooperation.

With the initial filing the Petitioner submitted evidence of his education and experience, as well as his honors, awards and distinctions. He submitted a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver. The Petitioner also submitted recommendation and support letters, and articles discussing crime and public safety issues in the United States.

Following initial review, SCOPS issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the requested EB-2 classification and for the national interest waiver. The RFE noted that the Petitioner had not established his eligibility for classification as an advanced degree professional or an alien with exceptional ability, or any of the three prongs of the *Dhanasar* framework.

In response to the RFE, the Petitioner stated that he qualifies for the requested EB-2 classification as an alien of exceptional ability, having demonstrated that he satisfies three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Specifically, the Petitioner asserted that he meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), based on his official academic records, having more than 10 years of experience in the field of public security, and recognition for his achievements and significant contributions to public safety. He also submitted an updated personal plan, additional articles on crime, and an advisory letter in an attempt to establish his eligibility for the national interest waiver.

After reviewing the Petitioner's response to the RFE, SCOPS determined that the Petitioner's proposed endeavor has substantial merit. SCOPS further determined that the Petitioner did not establish that his proposed endeavor has national importance, that he is well-positioned to advance his proposed endeavor, or that on balance, waiving the job offer requirements would benefit the United States. SCOPS did not make a determination on whether the Petitioner was eligible for the requested EB-2 classification as either an advanced degree professional or an alien of exceptional ability.

On appeal, the Petitioner submits a brief and asserts that SCOPS made several errors, including errors of fact, law and policy. The Petitioner further asserts that SCOPS did not provide an analysis of the evidence in the record or describe its deficiencies. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he meets the EB-2 classification and merits a national interest waiver.

A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification. Here, SCOPS did not make an initial determination regarding the Petitioner's eligibility in this threshold first step. SCOPS does not discuss or analyze evidence in the record submitted to establish that the Petitioner is an alien of exceptional ability. Nor does SCOPS provide a discussion or analysis of a final merits determination to conclude whether, in its totality, the Petitioner has demonstrated that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Because, as we discuss below, we conclude that the Petitioner has not demonstrated the national importance of the proposed endeavor, we need not reach the question of whether he qualifies for the EB-2 classification or the second or third prongs of the *Dhanasar* framework and we reserve our opinion regarding those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

B. National Interest Waiver

SCOPS determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884. We agree, for the reasons explained below.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* 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. *Id.*

SCOPS determined that the Petitioner had not shown how his proposed endeavor would have broader implications within his field that would reach beyond clients utilizing his services, or that it would broadly enhance societal welfare. SCOPS noted that the support and recommendation letters in the record did not demonstrate that the proposed endeavor will have national or global implications in the field of public security, or that the Petitioner's projects have significant potential to employ U.S. workers, would impact an economically depressed area, or would have benefits to the regional or national economy that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. SCOPS further noted that the articles in the record, while providing background information, do not address any details related to the Petitioner's specific proposed endeavor.

On appeal, the Petitioner maintains that SCOPS did not apply the preponderance of the evidence standard and did not give due regard to the Petitioner's personal statement, support letters, an advisory letter, and articles demonstrating the national importance of his proposed endeavor, as well as evidence of his professional experience and accomplishments. With respect to the national importance of the proposed endeavor, the Petitioner states, "By analyzing crime data, developing targeted crime prevention measures, and fostering trust between law enforcement and residents, [his] work will contribute to creating safer environments for all citizens." He further states that he "will provide technical guidance and expertise to government agencies, lawmakers, and other stakeholders on issues such as community policing, crisis management, and resource optimization."

The Petitioner's personal statements emphasize the challenges currently facing U.S. law enforcement agencies. The articles discuss national concerns in the field, including gun violence and surging crime rates, as well as the effectiveness of community policing. Several of the articles are reports of crimes committed by Brazilian nationals in the United States. We do not question the significance of these issues and their direct bearing on public safety and security, or their indirect impact on other aspects of life in the United States. When determining national importance, however, the relevant question

is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposed to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's personal statements do not demonstrate how the security consulting services he intends to provide would have broader implications in the private security, public safety, or law enforcement sector. He does not identify the "government agencies, lawmakers, and other stakeholders" to whom he will provide services and with whom he proposes to collaborate. He broadly states that he aims "to enhance the effectiveness of public security efforts worldwide and contribute to a safer international community," but the record does not provide adequate support for a determination that his specific proposed endeavor will have such a wide-reaching impact.

We also stated in *Dhanasar* 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. Here, the Petitioner does not identify the area where his consulting company will operate. Therefore, we are precluded from determining whether the area is economically depressed, that the proposed endeavor would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

In his personal statements and appellate brief, the Petitioner has placed considerable emphasis on his academic training and his professional experience in the field. The record also includes recommendation letters from his former colleagues in Brazil. While important, the Petitioner's expertise acquired through his academic and professional career primarily relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. A determination regarding the claimed national importance of a specific proposed endeavor cannot be inferred based on the Petitioner's past accomplishments, just as it cannot be inferred based on general claims about the importance of a given field or industry. While the Petitioner maintains that "the significance of his work extends beyond geographic boundaries, with broader implications that resonate on a national level," the submitted recommendation letters do not contain sufficient detail to corroborate this claimed impact.

We also acknowledge that the Petitioner provided an advisory letter from [redacted] of the [redacted] Commission, and retired Captain of the [redacted] In discussing how the Petitioner's service as a public security consultant would benefit the United States, [redacted] notes the Petitioner's achievements as a military police officer in Brazil and his past record of success in combatting Brazilian criminal activities and enhancing public safety. However [redacted] does not address the Petitioner's specific proposed endeavor. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and

the overall probative value). Here, much of the content of the advisory letter lacks relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

In *Dhanasar,* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, the record supports SCOPS's conclusion that the Petitioner has not submitted sufficient evidence to establish what the broader implications of his work would be, or that his work would extend beyond his company and its clients to impact the public safety or law enforcement industry in which it intends to operate, or that it would broadly enhance societal welfare at a level commensurate with national importance. While the Petitioner proposes to perform work in an area of national importance, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general benefits of enhanced public safety. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prong.[3] *See INS v. Bagamasbad, 429 U.S. at 25.*

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, SCOPS concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he is well-positioned to advance the 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. SCOPS addressed the previously submitted evidence in the RFE and decision, and explained how it was deficient in establishing that the Petitioner met the *Dhanasar* prongs and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.