U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38280936

Date: MAY 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a civil engineer, 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 petition, concluding that the Petitioner qualifies as an advanced degree professional but that the record 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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 qualifies for the EB-2 classification as an advanced degree professional. Based upon the evidence in the record that the Petitioner possesses a Ph.D. in civil and environmental engineering from the [redacted], we agree. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement is in the national interest. SCOPS found that the Petitioner did not establish any of the three required prongs of the analytical framework set forth in *Matter of Dhanasar*. On appeal, the Petitioner contends that the decision is not sufficiently supported by the evidence in the record and that SCOPS did not correctly apply the appropriate evidentiary standard or the analytical framework in *Matter of Dhanasar*. Upon de novo review we conclude, for the reasons discussed below, that SCOPS did not sufficiently put the Petitioner on notice regarding the evidentiary deficiencies found in the decision and that the decision does not sufficiently analyze the record based on the framework set forth in *Matter of Dhanasar*. A remand of the matter is therefore appropriate.

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. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's proposed endeavor is to benchmark the cost, schedule, and change order performances of state Department of Transportation projects in order to develop strategies that enhance cost and schedule efficiency in current and future projects. SCOPS determined that the Petitioner demonstrated the substantial merit of the proposed endeavor but not its national importance.

In finding that the Petitioner did not establish the national importance of the proposed endeavor, SCOPS stated that "the evidence does not include information about the national importance of the proposed endeavor" and that the Petitioner "did not submit evidence in support" of the claim that the endeavor is nationally important. While SCOPS may conclude that the evidence in the record is insufficient to establish the national importance of the proposed endeavor, we conclude that it is contrary to record before us to characterize it as containing *no* evidence that seeks to establish this requirement. For example, on appeal the Petitioner points to evidence, including the Petitioner's personal statements, support letters, and evidence regarding the importance of the nation's infrastructure, that was submitted in the initial filing and in response to the request for evidence (RFE).

On remand, SCOPS should examine the specific evidence in the record to determine the potential prospective impact of the proposed endeavor on transportation infrastructure and whether it is commensurate with national importance as described in *Matter of Dhanasar*.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

SCOPS initially stated in its RFE that the Petitioner established this requirement. However, SCOPS concluded in its decision that the record is insufficient. In reaching this conclusion, SCOPS stated that the Petitioner is required to show "a track record that supports projections of future work in your endeavor as well as the plans and progress to drive your endeavor forward." SCOPS stated that the Petitioner did not establish this requirement because she did not demonstrate that her work "has served as an impetus for progress" or "generated substantial positive discourse" in the field. SCOPS also concluded that the Petitioner did not establish the second prong because the evidence is insufficient to establish that she has had "a substantial influence in the field" or "made a significant contribution" in the United States.

First, we conclude that the analysis conducted by SCOPS is not sufficiently supported by the framework provided in *Matter of Dhanasar* for evaluating the second prong. Although SCOPS enumerated the relevant factors articulated in *Matter of Dhanasar*, the decision does not analyze the evidence in the record at it relates to these factors. Instead of analyzing the Petitioner's education, knowledge, skills, and record of success in related or similar efforts; the Petitioner's model or plan for future activities; and the interest of potential customers, users, investors, or other relevant entities, SCOPS focused on the Petitioner's influence and contributions to the field. We agree that a petitioner's substantial influence and significant contributions to the field may be positive factors in the second prong as they may establish, for example, an individual's knowledge, skills, and record of success. But these considerations in isolation do not sufficiently consider the factors enumerated in *Matter of Dhansar*. Moreover, primarily relying on an "influence standard" was an approach that we explicitly rejected in *Matter of Dhanasar* when we vacated our decision in *Matter of New York State Department of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), which established the previous framework used for evaluating national interest waiver petitions. *See Matter of Dhanasar*, 22 I&N Dec. at 887-88 n.6.

Second, we agree, as the Petitioner contends on appeal, that the inconsistent findings between the RFE and the decision precluded the Petitioner from providing additional evidence to overcome the deficiencies found in the decision. The Petitioner was not afforded an opportunity to provide additional evidence to demonstrate that she is well-positioned to advance the proposed endeavor, if needed, prior to SCOPS' decision. On appeal, the Petitioner presents additional information and evidence regarding the second prong. Where a petition is denied based on a deficiency of proof, and the petitioner was not put on notice of the deficiency with a reasonable opportunity to address it before the denial, then we will remand the matter to allow SCOPS to consider and address the new evidence or information. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). On remand, SCOPS should

consider whether the Petitioner is well-positioned to advance the endeavor based upon the factors enumerated in *Matter of Dhanasar* as well as any other relevant factors.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91.

In concluding that the Petitioner did not establish the third *Dhanasar* prong, SCOPS did not sufficiently discuss or analyze the evidence in the record as it relates to these factors. Instead, SCOPS concluded that the Petitioner made "[g]eneral assertions" regarding the influence of her work in the field and that this is insufficient. SCOPS also noted that the Petitioner did not establish the first and second prongs of *Dhanasar*. While we agree that the issue of whether a petitioner has established eligibility under the first and second prongs is relevant, SCOPS did not discuss the enumerated factors of the third prong at all.

An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the decision based on this deficiency. On remand, SCOPS should review the entire record in considering whether the Petitioner has established eligibility under each of the three prongs of the *Dhanasar* framework.

III. CONCLUSION

Accordingly, the matter will be remanded to SCOPS to determine if the Petitioner has established eligibility for a national interest waiver and to enter a new decision. SCOP may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.