U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37345874

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 structural 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 section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

SCOPS denied the petition, concluding that the Petitioner 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, petitioners must establish they are advanced degree professionals or individuals 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;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

SCOPS determined the Petitioner established his eligibility for the EB-2 classification as an advanced degree professional, and while the Petitioner demonstrated the substantial merit of his proposed endeavor, he did not establish its national importance to meet *Dhanasar's* prong one requirements. SCOPS concluded, as a result, the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest, and analyzing the remaining Dhanasar prongs would serve no purpose. We agree.

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 look for broader implications" of the proposed endeavor and explained that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. at 890. 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.

According to the Petitioner's initial filing, his proposed endeavor is to serve as a civil/structural engineer in the United States, providing consultancy and project management services through his company. In response to SCOPS' request for evidence, the Petitioner added that he will use his background in civil and structural engineering in challenging environments with the goal of benefitting public safety. SCOPS reviewed the Petitioner's evidence, including his personal statement, articles of formation for his business, industry articles, and expert letters and determined they did not establish the national importance of his endeavor. SCOPS also properly addressed the Petitioner's arguments that his endeavor is nationally important because it is within a Science, Technology, Engineering, and Mathematics (STEM) field and within the construction industry, aligns with national initiatives, and addresses talent shortages. SCOPS further concluded that the Petitioner's expert letters did not address his specific endeavor and therefore did not establish its national importance. On appeal, the Petitioner submits a brief but does not contest SCOPS' findings with respect to his previously submitted evidence. As SCOPS properly evaluated the evidence, we adopt and affirm its decision. 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 "is not only common practice, but universally accepted").

[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).

On appeal, the Petitioner submits a business plan, which is new evidence, and claims in his brief that the business plan supports his intention to hire a dozen workers from distressed communities and independent contractors. However, the Petitioner was put on notice and given a reasonable opportunity to provide this evidence. We will therefore not consider it for the first time on appeal. See Matter of Furtado, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988)); see also 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

The Petitioner's appeal brief adds additional detail to his proposed endeavor, stating he intends to operate his Florida based construction consulting and project management company, which will offer its services to residential, commercial, and civil construction projects by focusing on projects of unique importance to the public, such as airports, metro systems, and cable cars. He explains that his company will implement comprehensive project management strategies that prioritize modernization and capacity expansion that will, for example, contribute significantly to the sustainable growth of airport facilities. He further asserts that by providing sustainable construction and project management services, his proposed endeavor will broadly enhance societal welfare by reducing greenhouse gas emissions. The Dhanasar decision contemplates that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Matter of Dhanasar, 26 I&N Dec. at 893. However, it is not apparent how the Petitioner's services would have global or national implications to the field beyond the individuals or entities using them. Moreover, the Petitioner has not established the extent to which his proposed endeavor's methods or strategies improve upon those already available and in use in the United States such that his proposed endeavor would have national or global implications within his field or for the United States.

The Petitioner then re-argues that his proposed endeavor aligns with national initiatives. However, as SCOPS determined, merely working in an important field or in an area a government entity has described as a priority is insufficient to establish the national importance of the proposed endeavor. See id. at 889 (explaining that in determining national importance, we do not focus on the importance of the field, industry, or profession in which the individual will work but on "the specific endeavor that the foreign national proposes to undertake").

The Petitioner further asserts that SCOPS erred by not providing an analysis of *Dhanasar's* second prong. He argues that he has therefore met this prong as SCOPS has the duty to fully explain the reasons for denial and allow him a fair opportunity to contest the decision on appeal. The Petitioner cites 8 C.F.R. § 103.3(a)(1)(i), which requires an officer to explain in writing the specific reasons for denial, and Matter of M-P-, 20 I&N Dec. 786, 787-88 (BIA 1994), which provides that the reason for a denial should be identified and explained. However, SCOPS identified in the denial that the Petitioner did not establish the national importance of his proposed endeavor and provided an analysis of why he did not meet his burden of proof. Moreover, the issue of whether the Petitioner established the national importance of his proposed endeavor is dispositive, and SCOPS did not err in ending its analysis after the Petitioner did not establish the first Dhanasar prong. 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). Further, we similarly conclude that the Petitioner has not established the national importance of his proposed endeavor, which is dispositive of this appeal, and we reserve the issues of whether he has demonstrated that he meets the second and third Dhanasar prongs. See id.; 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, a requirement to establishing prong one of *Dhanasar's* framework. Consequently, the Petitioner has not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

ORDER: The appeal is dismissed.