U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37961377

Date: MAY. 13, 2025

Appeal of Service Center Operations Decision

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

The Petitioner 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).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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.

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*.

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.

Id.

II. ANALYSIS

SCOPS concluded that the Petitioner qualifies for the underlying EB-2 immigrant classification as an advanced degree professional and we agree. Therefore, the remaining issue on appeal is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

In applying the *Dhanasar* framework, SCOPS determined that the Petitioner did not provide a specific, detailed description of his proposed endeavor, and accordingly did not establish that his endeavor has substantial merit or national importance. In particular, SCOPS concluded that the Petitioner's endeavor as described in the record appeared to consist of multiple activities, and he did not explain how his intention to conduct research and development related to his intended employment as a chief operating officer as indicated on his Form I-140, Immigrant Petition for Alien Workers. Similarly, in evaluating whether he demonstrated that he was well-positioned to advance the proposed endeavor, it concluded again that the insufficient description of his proposed endeavor impeded its ability to determine whether he was well-positioned to advance a proposed endeavor. And, although SCOPS acknowledged his attainment of two advanced degrees in STEM fields, it explained that education and past research alone is not sufficient to demonstrate that a petitioner is well-positioned to advance an endeavor. SCOPS also concluded that the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the job offer requirement and thus a labor certification.

On appeal, the Petitioner contends that SCOPS ignored USCIS policy and did not sufficiently review the relevant statements and evidence in the record. He asserts that he explained his proposed endeavor in detail in the initial filing and in response to the request for evidence (RFE), establishing both the substantial merit and national importance. Moreover, the Petitioner claims that in determining that he was not well-positioned to advance his endeavor, SCOPS evaluated each factor on an individualized basis, rather than considering the evidence in its totality. The Petitioner also asserts that SCOPS disregarded USCIS policy recognizing the importance of STEM fields and the role of persons with advanced STEM degrees. Ultimately, the Petitioner contends that the evidence submitted was sufficient to establish eligibility for the requested national interest waiver and supplements the record with additional evidence, including a third personal statement clarifying his proposed endeavor.

As a preliminary matter, while we acknowledge the Petitioner's assertions relating to USCIS policy recognizing the importance of STEM fields and the role of advanced STEM degree holders, the

[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).

evidence in the record must still satisfy each *Dhanasar* prong.[2] For example, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance. While several proposed endeavors aimed at advancing STEM technologies and processes may have substantial merit, such activities, by themselves, generally are not indicative of an impact in the field of STEM more broadly. Nonetheless, upon review, we agree that SCOPS' decision does not properly analyze the evidence submitted and therefore does not sufficiently explain the reasons for denial.

The record reflects that the Petitioner is the co-founder of [redacted] and, at the time of filing, was serving as its chief operating officer / chief technology officer.[3] The record contains multiple statements from the Petitioner describing his intention to "continue [his] work performing technology development and technology commercialization especially in the climate technologies," and that his current work with [redacted] "involves commercializing exclusively licensed intellectual property owned by the U.S. Department of Energy, which was originally invented at [redacted]" In response to SCOPS' RFE, the Petitioner clarified that he intends to "continue [his] work performing anti-reflective technology research and development and advancing the commercialization of U.S. government-owned intellectual property." The Petitioner also asserts that he plans to utilize his developments "to benefit machine vision in applications such as autonomous vehicles and security cameras," in order to minimize issues arising from bright light sources, such as the sun, disrupting the field of view of cameras.

An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to afford us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(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). While the decision lists the evidence submitted in support of the Petitioner's background and his proposed endeavor, we agree that SCOPS did not adequately discuss the evidence in the record in determining the record lacked sufficient information pertaining to the Petitioner's specific endeavor. For example, while the decision includes excerpts of the endeavor statement submitted in response to the RFE, it does not acknowledge the Petitioner's assertions that he will "leverage [his] development work to apply the same technology for advanced optics applications, where the anti-reflection glass reduces flare for captured images," which could "enhanc[e] the safety of autonomous vehicles." Moreover, in this same statement, the Petitioner provided detail as to the nature of his past work, and how he intends to utilize the resources made available to him at the [redacted] to continue to conduct his commercialization work.

In addition to his personal statements, the record contains two letters from the Director of [redacted]. SCOPS's decision, however, did not meaningfully address or analyze the evidence. For example, in the letter from the [redacted] they explained that the Petitioner's work and the antireflection technology has applications that could "advance[] space-technology capabilities [and] carries implications for national security." However,

[2] See generally 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.

[3] The evidence in the record contains differing accounts of the Petitioner's title with [redacted] While he identifies his title as chief technology officer in his initial endeavor statement, letters from [redacted] also identify him as the company's chief technology officer and chief operating officer.

SCOPS does not acknowledge or address this evidence. Accordingly, we conclude that the decision does not sufficiently analyze the record under *Dhanasar's* first prong, and thus a remand of this matter is appropriate.

Similarly, SCOPS' conclusion that the Petitioner did not establish he is well-positioned to advance the proposed endeavor rests largely on its determination that the Petitioner had not sufficiently described his proposed endeavor. However, the Petitioner articulated claims that the proposed endeavor involves building on his prior commercialization efforts. Moreover, he explained how he will have access to this intellectual properly from the DOE. On appeal, the Petitioner contends that the decision evaluates each factor on an individualized basis, concluding that they do not establish the Petitioner is well-positioned to advance the proposed endeavor rather than considering the evidence in its totality. We agree. We also note that the decision does not acknowledge the letter from the [redacted] confirming that the Petitioner has access to conduct his research and development work and also confirms his company's ability to license their property. Moreover, because the decision primarily relies on SCOPS' determination that the Petitioner did not adequately detail his endeavor, a remand is appropriate for SCOPS to consider the statements in the record, including statements from representatives of [redacted]

SCOPS' analysis of the third prong of the *Dhanasar* framework also contains similar deficiencies. 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. 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. *Id.* 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. *Id.* at 891. Here, SCOPS primarily relies on its determination that the Petitioner did not provide a sufficient description of his endeavor. And, while SCOPS discussed the availability of a labor certification to the Petitioner, it did not discuss the evidence in the record or otherwise explain how they weighed the evidence in balancing the relevant considerations discussed in *Dhanasar*.

III. CONCLUSION

For the reasons discussed, 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. On remand, SCOPS should review the entire record, including the Petitioner's appeal, to evaluate whether he has established eligibility for each of the three prongs of the *Dhanasar* framework. SCOPS may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

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