U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37295538

Date: MAY 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a medical researcher who 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 while the Petitioner established that he qualifies for classification as a member of the professions holding an advanced degree, he did not establish 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*.

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

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.[2]

The Petitioner states that his proposed endeavor is to develop "new clinical toxicology management practices for poisoned patients and implement prevention strategies for traumatic injuries in order to reduce mortality and morbidity and increase positive patient outcomes." Based on his "experience in the field," the Petitioner seeks a researcher position at the [redacted] or with a comparable employer.

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. *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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

Here, SCOPS determined, and we agree, that the Petitioner's endeavor has substantial merit and national importance.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine whether they are well positioned to advance the proposed endeavor, we consider factors

[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).

[2] The Director determined that the Petitioner did not meet the second and third prongs of the *Dhanasar* analytical framework. To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

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. *Id.*

The record includes the Petitioner's curriculum vitae, academic records, published work, recommendation letters from medical professionals discussing his work, and information regarding his citation record. On appeal, the Petitioner highlights his "record of publication in numerous national and international journals" and contends that SCOPS did not adequately consider his educational credentials, "numerous academic appointments, participation in multiple professional functions, and prestigious membership in the [redacted]. We disagree. While we acknowledge the Petitioner's record of publication and citation history, we conclude that the Petitioner has not adequately documented how he intends to pursue his proposed research activities. Nor has he established that he has generated interest in his future research or made progress towards achieving the specific proposed endeavor.

In denying the petition SCOPS compared the facts in this matter with those in *Matter of Dhanasar*, highlighting that unlike the Petitioner, Dr. Dhanasar was already employed as a postdoctoral research associate and was working on endeavor-related research and development at the university where he intended to continue with that endeavor. *Id.* at 891. In contrast, the instant record contains no evidence of any interest or communication between the Petitioner and the [redacted] or any other potential employer where the Petitioner could perform his research. While SCOPS acknowledged that a job offer is not required for this visa classification, the absence of such an offer was properly noted and considered based on the specific circumstances of this case where a job offer was indicated as an inherent feature to the Petitioner's ability to pursue his proposed endeavor.

On appeal, the Petitioner continues to highlight his "education, experience, and prolific record of success in the field of medicine" as evidence that he is well-positioned to advance the proposed endeavor. However, he does not point to evidence showing that he has made progress towards achieving his proposed endeavor through interest from potential employers where he could conduct research related to his endeavor.

SCOPS further noted that unlike the petitioner in *Matter of Dhanasar*, who played a critical role in obtaining funding for grant proposals, the Petitioner in this case did not provide evidence showing that he led any research projects that were publicly or privately funded or that he received funding to conduct his research. While the Petitioner is correct in stating that such evidence is not specifically required, we are not precluded from considering the lack of such evidence as a factor in this analysis, particularly given that funding is critical to the Petitioner's research-based endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner also argues that SCOPS did not properly assess previously submitted evidence of his published work or consider the prestige of the journals that published his "groundbreaking findings, his notable citations, and the accompanying explanations of their significance." However, the Petitioner does not identify specific articles or establish that the findings discussed therein were groundbreaking or notable, as claimed. For instance, the Petitioner's record of publication was mentioned in a recommendation letter from Dr. M-S-, who works with the Petitioner at [redacted]

[redacted] and who also referred to the Petitioner's "novel methodology" of "relying on hydroxyethyl starch for fluid resuscitation, and employing vegetable oil or liquid paraffin for gastric contamination" to reduce toxicity in patients suffering from aluminum phosphide poisoning. However, Dr. M-S- did not provide any details about the Petitioner's "many research successes" nor did she indicate that the Petitioner's approach has been widely accepted and used within the medical community beyond the hospital where she and the Petitioner work. It is therefore unclear how the Petitioner's approach represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

In another letter, Dr. F-G-, a medical consultant with [redacted] discussed the Petitioner's work in identifying "the effects of methadone and opium toxicity on the heart." However, Dr. F-G- does not offer examples of how the Petitioner's findings have been implemented, utilized, or applauded among medical practitioners, or otherwise demonstrate that he is well positioned to advance his endeavor. Also, it is unclear how the Petitioner's findings on the cardiac impacts of opiate overdoses relate to his proposed endeavor, which is to develop "new clinical toxicology management practices for poisoned patients and implement prevention strategies for traumatic injuries in order to reduce mortality and morbidity and increase positive patient outcomes." Likewise, the letter from Dr. H-V- also appears unrelated to the Petitioner's endeavor as it focuses on the Petitioner's "significant efforts exploring low-dose radiotherapy [] as a viable osteoarthritis [] pain management and functional improvement pathway."

In sum, while the aforementioned references note the importance of the Petitioner's past research, they do not offer specific examples of how the Petitioner's findings have generated positive interest among relevant parties, have been implemented as part of patient treatment protocols, or otherwise reflect a record of success in his area of research.

The Petitioner also contends that SCOPS did not consider his medical degree, "participation in multiple professional functions," or his membership in the [redacted] asserting that he shares a "similar background" to the petitioner in *Matter of Dhanasar*. While we acknowledge that the Petitioner's degree in a STEM field is an especially positive factor for consideration, the Petitioner has not demonstrated that his academic accomplishments are sufficient in and of themselves to demonstrate that he is well positioned to advance his proposed endeavor. Rather, we must examine a variety of factors and education is merely one factor among many that may contribute to our determination. *See* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual.

Further, regarding the Petitioner's membership in the [redacted] SCOPS specifically discussed such evidence and determined that while the Petitioner provided sufficient documentation to corroborate his membership in the medical society, the proof of membership included no membership or expiration dates and was not accompanied by evidence of the membership's significance to reflect a record of the Petitioner's success or level of interest in his work. The Petitioner does not address these noted deficiencies on appeal. In addition, when USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577

F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). Here, the record does not show that the Petitioner's previously submitted evidence was overlooked.

The Petitioner also does not support his contention that SCOPS failed to apply the preponderance of the evidence standard. Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify a specific instance in which a standard of proof other than the preponderance of evidence was applied in denying the petition.

In sum, the record demonstrates that the Petitioner has conducted, published, and presented research during his professional career, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Matter of Dhanasar, 26 I&N Dec.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the medical field or that it has generated substantial positive discourse in the medical community. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing medical research that relates to developing clinical toxicology management practices and implementing strategies for preventing traumatic injuries and increasing positive patient outcomes. As the Petitioner has not demonstrated that he is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

III. CONCLUSION

Because the documentation in the record does not establish that the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, he 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 third prong 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).

As the Petitioner has not met the requisite second prong of 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.