U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42644144

Date: MAY 14, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a technology corporation, 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 the record 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.

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: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

The Petitioner states that it is a "leading developer and innovator of advanced wireless technologies, products, and services." It claims that its products play in integral role in modern society and impact various key industries in the U.S., including automotive, mobile communications, Internet of Things

[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).

(IoT), networking, consumer electronics, and healthcare. The Beneficiary currently works for the Petitioner as a staff modem technologies software engineer. In his "Statement of Proposed Endeavor," he states his proposed endeavor is "to drive innovation and efficiency in wireless communication technologies through the meticulous design and optimization of Radio Frequency (RF) digital modules and algorithms."

SCOPS determined that the Beneficiary qualifies for the underlying EB-2 classification as an advanced degree professional but did not satisfy any of the three requisite prongs of the *Dhanasar* analytical framework, any one of which is dispositive.

On appeal, the Petitioner limits its arguments to SCOPS' analysis of the first and second *Dhanasar* prongs. It does not meaningfully address or contest SCOPS' specific findings that the Petitioner did not establish that, on balance, waiving the job offer requirement would benefit the United States under the third prong.[2]

In its denial, SCOPS specifically noted that it considered factors including the impracticality of obtaining a labor certification; the benefit to the United States from the beneficiary's prospective contributions, even if other U.S. workers are also available; whether the national interest in the individual's contributions is sufficiently urgent; evidence that the beneficiary's endeavor may lead to potential creation of jobs; and evidence that the beneficiary is self-employed in a manner that generally does not adversely affect U.S. workers. SCOPS outlined the many factors considered, and the Petitioner does not directly address any of the points beyond its vague references and assertions that the evidence establishes the Beneficiary's eligibility. As the Petitioner has not addressed with specificity SCOPS' determination that the Beneficiary does not qualify for a national interest waiver under the third prong, and in particular the impracticality of the labor certification process, we deem the issue to be waived. *See Matter of Garcia*, 28 I&N Dec. 693 n.1 (BIA 2023) (providing that arguments that do not meaningfully challenge the decision are waived); *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (providing that arguments not developed on appeal are deemed waived).

Because the Petitioner has not shown that the Beneficiary satisfies the third prong, it cannot establish eligibility for a national interest waiver. As this issue is dispositive of the appeal, we decline to reach and hereby reserve remaining issues and arguments concerning SCOPS' determinations as to the first and second *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are

[2] In its appellate brief, the Petitioner acknowledges that SCOPS also denied the petition on the third prong. It states "the Petitioner submits that the evidence of the record establishes that it is substantially more likely than not . . . that, on balance, the Beneficiary's contributions will benefit the United States more than what would accrue from another labor certification." However, the Petitioner does not address how the Beneficiary would meet prong three beyond offering this general statement.

otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.