U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38305964

Date: MAY 19, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a research scientist, 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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.*

In evaluating the Petitioner's request for a national interest waiver, SCOPS concluded that the Petitioner had not established his proposed endeavor's national importance, that he is well positioned

[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).

to advance the endeavor, or that, on balance it would be beneficial to the United States to waive the job offer requirements. On appeal, the Petitioner contends, among other things, that SCOPS did not properly analyze the evidence or explain the rationale underlying their determination. We agree.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g.*, *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). SCOPS' decision did not meet these requirements.

The decision lacks sufficient analysis and discussion of the evidence. For example, in evaluating the national importance of the endeavor under *Dhanasar's* first prong, SCOPS made conclusory statements without specifically addressing the evidence on record. Although the decision states 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 his statements, the record reflects the Petitioner submitted documentation including personal statements describing his endeavor, an independent advisory opinion letter, and industry articles, in support of his claim that he satisfied this prong. None of this evidence was addressed in the decision.

SCOPS reached similarly conclusory determinations with respect to *Dhanasar's* second and third prongs. Concerning the second prong, the decision lacks specific analysis of the Petitioner's evidence such as his publications, citation record, and personal statements describing his plans to advance his proposed endeavor. Likewise, regarding the third prong, the decision concludes, without a specific discussion of documents in the record, that the Petitioner "ha[s] not submitted documentary evidence" demonstrating that he met this prong.

Again, an officer must explain the specific reasons for denying a petition. *See* 8 C.F.R. § 103.3(a)(1)(i). While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver, SCOPS did not adequately address the evidence and arguments submitted with the initial filing and in response to the RFE, did not discuss most of the relevant factors set forth in *Dhanasar* and, therefore, did not sufficiently explain the reasons for denial.

Accordingly, we withdraw SCOPS' decision and remand this matter for further consideration and entry of a new decision. On remand, SCOPS should review the entire record, including the Petitioner's appeal, and determine whether he has established eligibility under each of the three *Dhanasar* prongs. If SCOPS concludes that the Petitioner's evidence does not meet a specific eligibility requirement, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. SCOPS may request any additional evidence considered pertinent to the determination prior to issuing a new decision. In remanding, we express no opinion as to the ultimate resolution of this case.

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