U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37719240

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 business administrator, 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 Petitioner did not establish 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.

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

II. ANALYSIS

The Petitioner's proposed endeavor is to provide "consulting services geared towards American small and medium sized retail companies. He will implement digital marketing models. . . seeking to improve their productivity, profitability, sales. . . through innovation and logistics, enhancing the provision of their services in a profitable and organized way. . . ." SCOPS determined that the Petitioner established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree. In addition, SCOPS concluded that the Petitioner's proposed endeavor was of substantial merit. However, SCOPS ultimately concluded that the Petitioner did not establish his proposed endeavor was of national importance, that he was well positioned to advance the proposed endeavor or 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. The Petitioner contends that SCOPS' decision "contains instances of a misunderstanding and misapplication of law that go beyond harmless and reach the levels of abuse of discretion." Upon review, we conclude that although the decision contains instances of misunderstanding, the errors are, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). We conclude that the record does not establish the Petitioner's proposed endeavor is of national importance and therefore he is not eligible for a national interest waiver as a matter of discretion.

A. EB-2 Classification

SCOPS concluded that the Petitioner is qualified for EB-2 classification as a professional with an advanced degree. The record contains evidence that the Petitioner obtained a business administration degree in 2010 in Colombia. The record also contains an academic evaluation which states this degree is equivalent to a U.S. bachelor's degree in business administration. Additionally, the Petitioner submitted letters showing over five years of progressive experience. We conclude that the record establishes by a preponderance of the evidence that the Petitioner qualifies for the underlying EB-2 classification as a professional with an advanced degree.

[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).

B. National Interest Waiver

1. Substantial Merit

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.* The Petitioner's proposed endeavor will "provide specialized consulting services in logistics optimization, distribution enhancements, and digital marketing for small and medium-sized businesses in the retail sector. . . . Services will include logistics capacity evaluations, process optimization, inventory management, distribution analysis, growth projections, cost optimization, targeted online advertising, customer profile development, and training workshops." The record contains articles about the impact of small and medium-sized businesses on the U.S. economy, challenges facing the retail industry, and government initiatives to address these challenges. We conclude that the record establishes the substantial merit of the Petitioner's proposed endeavor.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner proposes to open his own consulting company where he will meet face to face with clients within an 80 mile radius of his headquarters in [redacted], Georgia to address their challenges with logistics, distribution, and digital marketing; providing support in all stages such as diagnosis, planning, implementation, and an evaluation of results. As stated above, the Petitioner contends that SCOPS' decision "contains instances of a misunderstanding and misapplication of law that go beyond harmless and reach the levels of abuse of discretion." The Petitioner contends SCOPS did not discuss the totality of the evidence in the request for evidence and in the denial decision amounting "to an abuse of discretion on the part of the adjudicator" citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994). But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility. When USCIS provides reasoned consideration of the petition, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *See, e.g., Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

To determine whether the Petitioner has met his burden under the preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we conclude that SCOPS, in evaluating whether the Petitioner had established that he meets the first prong of the *Dhanasar* framework, weighed all the evidence but determined that the evidence overall lacked probative value. For example, on appeal, the Petitioner contends that SCOPS erred in stating the Petitioner did not submit evidence to demonstrate the potential prospective impact of the proposed endeavor. However, the decision states that the Petitioner

did not submit "*sufficient* information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance." (emphasis added). This amounts to analysis of the quality of the submitted evidence and not the lack of any evidence. Upon de novo review, we agree that the Petitioner has not established that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

We note that the SCOPS decision appears to misunderstand how the Petitioner will carry out his proposed endeavor, stating that the Petitioner will "obtain a position in the consulting field." SCOPS determined that the record did not establish the Petitioner's proposed endeavor would have a broader impact on the industry. The record reflects that the Petitioner will open his own consulting business. However, we agree with the analysis; that the record does not establish the impact of the Petitioner's proposed endeavor would extend beyond his clients to impact the field more broadly. *Dhanasar* states that an 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. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner states that his endeavor addresses critical challenges facing small and medium sized retail businesses and will improve supply chain resilience, increase competitiveness, and foster economic growth. Although the record demonstrates the Petitioner would address certain challenges to the benefit of his direct clients; the record does not reflect how his services would address these challenges in the retail industry to impact the retail industry more broadly to have the national or global implications as *Dhanasar* requires. Additionally, the Petitioner proposes to provide workshops and online trainings with the help of entities that support small businesses. In *Dhanasar*, we determined that the Petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Therefore, this does not further establish the broader impact on the industry that *Dhanasar* requires for establishing national importance.

The Petitioner contends that his proposed endeavor establishes national importance as it "addresses critical challenges" in the industry. In support of this claim, the Petitioner submitted industry articles and reports detailing the challenges facing the retail industry and small and medium sized businesses. The record contains industry articles and reports such as [redacted] and [redacted] The record contains articles that establish the importance of small businesses to the U.S. economy and the challenges they face. However, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on, "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We recognize the importance of the retail industry and the value of small and medium sized businesses; however, working in an important field is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. Although he proposes to work in the industry and assist businesses in addressing challenges, the record establishes the impact of his work will be limited to his direct clients. The industry reports and articles provide good background information on the industry itself, the industry being important to the U.S. government, and its substantial merit; however, without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The Petitioner asserts that his proposed endeavor will yield economic effects commensurate with national importance as his proposed endeavor will directly create 17 full-time jobs by its fifth year of operation and 35 indirect jobs. *Dhanasar* states that an 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. *Dhanasar*, 26 I&N Dec. at 890. Here, the record does not establish that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects as the record does not establish his company's future staffing levels and business activity stand to provide substantial economic benefits. Specifically, the record does not support that the direct creation of 17 additional jobs in this sector or the expected tax revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

He further states that his work targets areas that are economically depressed, and his proposed endeavor will contribute to the economic revitalization of these areas and bolster public infrastructure. The Petitioner highlights on appeal an expert opinion letter written by V-L- which discusses the importance of digital marketing in the small business retail industry to increase competitiveness with larger businesses. The author discusses the general importance of digital marketing, logistics, and small businesses. For example, he states that the Petitioner's proposed endeavor will broadly enhance societal welfare since "logistics professionals have a social impact as they help provide essential goods and services to people across the country. . . ." This statement is about logistics professionals in general and not the Petitioner's specific endeavor and how his endeavor will broadly enhance societal welfare. However, the author also discusses the proposed endeavor's economic impact by stating that the Petitioner "will actively contribute to the economic growth and social well-being of Opportunity Zones by prioritizing the recruitment and hiring of qualified individuals residing in or near these economically distressed communities. . .leading to an overall increase in income and a reduction in poverty rates." Although the author reiterates the Petitioner's statements of his proposed endeavor's economic impact to an economically depressed area, the record does not demonstrate that the staffing levels of his specific proposed endeavor constitutes "significant potential to employ U.S. workers" or "substantial positive economic effects" and therefore does not rise to the level of national importance.

An additional expert opinion letter in the record discusses the impact of the Petitioner's proposed endeavor but does not establish that impact will be to more than his direct clients. For example, the author states that the Petitioner's proposed endeavor will have an economic impact as it will enable his clients to "leverage digital tools, increase their productivity, and become more attractive to investors." Although these services could result in an economic benefit to the Petitioner's clients, this does not establish a broader economic impact. The record establishes the economic importance of the retail industry and small businesses and an impact to the Petitioner's direct clients but does not establish that the proposed endeavor itself would have a "substantial positive economic impact." While we conclude the record establishes his work impacts his direct clients, the record does not demonstrate a broader economic impact that would rise to the level of national importance.

We further note that, although the Petitioner asserted that his "endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives," as we addressed above, the relevant question for determining national importance is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national

importance, we focus on the "specific endeavor that the [Petitioner] proposes to undertake." *Dhanasar* 26 I&N Dec. at 889. The Petitioner's reference to "a matter that a government entity has described as having national importance or is the subject of national initiatives" in the context of determining whether the proposed endeavor may have national importance is misplaced because--regardless of whether a generalized industry or field may have national importance or is the subject of a national initiative--the record must nevertheless establish how "the specific endeavor that the [Petitioner] proposes to undertake" may have "national or even global implications *within a particular field,* such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90 (emphasis added).

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the Petitioner is ineligible for a national interest waiver, we need not reach, and therefore reserve, remaining *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).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that he is eligible for or otherwise merits a national interest waiver as a matter of discretion

ORDER: The appeal is dismissed.