U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38173214

Date: MAY 22, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an international development specialist, 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).

SCOPS denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a 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 doctoral degree is customarily required for the specialty, the alien must possess a U.S. doctorate or a foreign equivalent 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 Petitioner seeks to work in the "areas of development and implementation of instrumental power projects and initiatives" aimed at enabling private sector investments in emerging markets, particularly in "fragile and conflict-affected situations," with the goal of expanding access to electricity and promoting clean energy solutions. SCOPS found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] 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. For the reasons discussed below, we conclude the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

In denying the petition, SCOPS acknowledged that the Petitioner's proposed endeavor has substantial merit. While SCOPS did not evaluate or make a determination regarding the second *Dhanasar* prong, SCOPS determined that the Petitioner did not establish the proposed endeavor's national importance, and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner contends that SCOPS' decision was based on erroneous conclusions of law and fact. She further argues that SCOPS engaged in "arbitrary decision making" by failing to apply the proper standard of proof and the *Dhanasar* analytical framework. The Petitioner also asserts that SCOPS disregarded evidence such as the recommendation letters and expert opinion letters.

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.*

As a preliminary matter, it is important to note that the Petitioner, in the original petition, stated that she was currently employed as the global lead counsel for power for [redacted] and identified as an international development specialist. In her personal statement, the Petitioner stated, "I am planning to continue to engage professionally in initiatives and projects in the field of international development finance in the power sector, and to contribute to, and advance the overall aims of, my field of expertise in which I have been involved during my professional career." She described her proposed

[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 Petitioner earned a master's degree in law from the [redacted] in 1994.

endeavor as one that will involve her developing and implementing "instrumental power projects and initiatives enabling private sector investments in emerging markets, particularly in fragile and conflict affected situations, facilitating access to electricity and supporting the clean energy transition around the world, particularly in developing nations." She also indicated her intention to apply her skills to U.S. "based public sector institutions in the development finance space, think tanks and private [U.S.] investors in the power sector." However, in response to SCOPS' request for evidence (RFE), the Petitioner shifted her plans, stating that she proposes to establish a consultancy firm, [redacted] that will advise and support U.S. private sector investors and collaborate with government agencies and institutions and offer services such as structuring "bankable power projects" and investment and utilizing political risk mitigation instruments. The Petitioner's initial description of her proposed endeavor did not include plans to open and operate a business. It was only upon the issuance of the RFE that the Petitioner, for the first time, presented her proposed endeavor to establish a business to offer consulting services. This shift introduced a new business model not previously described in the petition and significantly changed the nature of the proposed endeavor. Although the Petitioner did not initially articulate whether she intended to pursue her proposed endeavor while remaining in her current employment or through a new employer, the Petitioner did not submit a business plan or implementation plans/timeline to support a plan to open a consulting firm. The absence of a clearly defined proposed endeavor prevents us from meaningfully assessing the endeavor's significance under the *Dhanasar* framework. Moreover, a fundamental change in the nature of an endeavor constitutes an impermissible material change.

The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Here, the Petitioner's new proposed endeavor in the RFE reply describes a new set of facts regarding the proposed endeavor. The Petitioner's proposed endeavor to open and operate her consulting firm was presented after the filing date and cannot retroactively establish eligibility. As the *Dhanasar* framework requires an analysis of the proposed endeavor's substantial merit and national importance, such a change is material to her eligibility for a national interest waiver. Accordingly, we conclude that the Petitioner made an impermissible material change to her proposed endeavor. We will therefore only consider the Petitioner's original proposed endeavor to continue working and engaging in initiatives and projects in the field of international development finance in the power sector.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. 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 [petitioner] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n 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." *Id.* at 890.

The Petitioner submitted several documents in support of the petition and in response to SCOPS' RFE. The record includes a personal statement, resume, academic records, expert opinion letters, recommendation letters, evidence of participation in prior development projects, conference and teaching engagements, and industry reports and articles. While we do not discuss every piece of evidence individually, we have reviewed the record and have considered the Petitioner's eligibility for the national interest waiver. The authors of the recommendation letters and expert opinion letters highlight the Petitioner's academic background, professional experience, expertise in the international development finance for the power sector in emerging markets, and the Petitioner's contributions to the field and through her employment at [redacted] The record therefore demonstrates the proposed endeavor's substantial merit. However, the authors do not offer sufficient detail regarding the Petitioner's specific proposed endeavor and its national importance. For example, the authors do not address whether the Petitioner's specific endeavor will bring substantial economic benefit to the country that would rise to the level of national importance, impact the relevant field on a national scale, or enhance societal welfare on a broader scale indicative of national importance.

The Petitioner underscores her extensive experience in international development related to power. She states that her endeavor will "clearly benefit the national interest of the United States by virtue of her achievements in the field of international development finance as related to the power sector with a focus on renewable power development." While we acknowledge the Petitioner's extensive experience and accomplishments at [redacted] and in the independent development finance for the power sector field, the Petitioner, nonetheless, has not offered sufficient information and evidence to demonstrate that the prospective impact of her specific proposed endeavor will rise to the level of national importance.

Moreover, although an individual's experience, qualifications, contributions, and achievements are material, these experiences are misplaced in the context of the first *Dhanasar* prong. The Petitioner's professional experience is generally material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar*'s first prong. The Petitioner however has not shown that the specific endeavor she proposes to undertake stands to sufficiently extend beyond her clients, partners, employers, or companies she elects to work with to offer substantial economic effects for the United States or enhance societal welfare on a broader scale indicative of national importance.

The Petitioner emphasizes the importance of her endeavor in the field of international development and states that her ongoing work will include involvements in several government initiatives. She states that her career in "the field of international power investment has greatly impacted the economic stability and access to renewable energy sources of numerous countries around the world," which she asserts is a key national interest of the United States. Merely working in an important field and the endeavor's alignment with government initiatives alone is insufficient for national importance. While the Petitioner's field of focus—international development finance and access to electricity and clean energy—may generally align with nationally recognized priorities, the record does not establish how the Petitioner's specific proposed endeavor will have broader implications in her field, positively impact the U.S. economy, or generate direct and indirect jobs on a broad scale rising to the level of national importance. The Petitioner must support her assertions with relevant, probative, and credible

evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner 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 her eligibility under the second and third prongs 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she 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.

ORDER: The appeal is dismissed.