U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 38613631

Date: MAY. 28, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a civil engineer, 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 record did not establish that a waiver of the job offer requirement is 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because SCOPS' decision is insufficient for 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:

- 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.

[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).

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

SCOPS determined that the Petitioner qualifies for the EB-2 classification as an advanced degree professional. Based upon the evidence in the record that the Petitioner possesses a master of engineering degree in civil engineering from the [redacted], we agree. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement is in the national interest. Upon de novo review we conclude that SCOPS did not sufficiently analyze the record based on the framework set forth in *Matter of Dhanasar* and did not sufficiently put the Petitioner on notice regarding any evidentiary deficiencies in the record. A remand of the matter is therefore appropriate.

Regarding the first *Dhanasar* prong, SCOPS made contradictory statements, stating both that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has national importance but also that "the evidence of record does not convey an understanding of how the [P]etitioner's proposed employment activities stand to have a broader impact on the field, rising to the level of having national importance." These contradictory statements leave it unclear as to what finding SCOPS intended to make and whether it intended to conclude that the Petitioner established this requirement.

As to the second *Dhanasar* prong, SCOPS concluded that the Petitioner did not demonstrate that he is well-positioned to advance the proposed endeavor, but did not provide any analysis related to this determination. Instead, the decision provides only a bullet point list summarizing the evidence and the conclusion that the Petitioner has not demonstrated that he is well-positioned to advance the proposed endeavor. SCOPS did not discuss any of the evidence, did not analyze the evidence as it relates to the factors enumerated in *Matter of Dhanasar*, and did not provide any other analysis regarding this determination.

An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also 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). Therefore, we will withdraw the decision based on this deficiency. On remand, SCOPS should review the entire record in considering whether the Petitioner has sufficiently identified his proposed endeavor and whether he has established eligibility under each of the three prongs of the *Dhanasar* framework.

Accordingly, the matter will be remanded to SCOPS to determine if the Petitioner has established eligibility for a national interest waiver and to enter a new decision. SCOPS may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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