U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37197073

Date: MAY 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner 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 the Petitioner's eligibility for a national interest waiver. 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 non-citizen 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.

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

II. ANALYSIS

SCOPS determined that the Petitioner established her eligibility for the EB-2 classification as a member of the professions holding an advanced degree and that the Petitioner's proposed endeavor meets the first prong of the *Dhanasar* framework. However, SCOPS ultimately concluded that the Petitioner did not establish she is 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. On appeal, the Petitioner contends that SCOPS did not objectively evaluate the evidence under the preponderance of the evidence standard. Upon de novo review, we conclude that the Director properly analyzed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence and the Petitioner did not demonstrate that she is eligible for a national interest waiver, as addressed below. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

A. The Petitioner's Proposed Endeavor and EB-2 Classification

As an initial matter, we will briefly address two issues not previously discussed by the Director. First, we note that the record does not sufficiently establish the Petitioner's proposed endeavor. A petitioner must identify the "specific endeavor that [the individual] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether an individual qualifies for EB-2 classification or national interest waiver, we rely on the specific proposed endeavor. *See id;* section 203(b)(2)(A), (b)(i) of the Act.

For example, in the initial petition, the Petitioner listed her job title as "Dentistry and Healthcare Consultant."[2] However, in the initial statement, the Petitioner indicated that her proposed endeavor is a "Dentist/Dental Surgeon" and included a general list of the clinical duties of a "Dentist/Dental Surgeon." She asserted that the main focus of her proposed endeavor is "performing complex procedures using the latest technology" and "assist[ing] each patient in understanding his or her current dental status while achieving and maintaining long-term and optimal dental health." The Petitioner also stated that she will teach others in the field, continuing her work as a professor in "Orofacial Harmonization."

Then in response to the request for evidence (RFE), the Petitioner submitted a business plan for a management consulting company to offer comprehensive business consulting services tailored to

[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] *See* Form I-140, Part 6, Item 1.

dental practices, medical clinics, and hospitals. At the same time, the Petitioner asserted that she will "embark on [her] professional journey as a Dentist/Dental Surgeon in the United States" and that she is "well-prepared to offer a range of dental and aesthetic treatments." On appeal, the Petitioner states that she does not need a license to practice dentistry in the United States as her proposed endeavor will not involve practicing dentistry, but she will be the CEO of the management consulting company, focusing on strategic business operations, client acquisition, and overall company growth.

We conclude that the record does not consistently describe the Petitioner's endeavor. However, SCOPS did not address this discrepancy and whether submitting a business plan for a management consulting company in response to the RFE is a material change. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). 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 1991). Further, the purpose of 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), (8), (12). The record contains conflicting statements regarding the Petitioner's endeavor and therefore, does not sufficiently establish the Petitioner's endeavor. However, since the Petitioner was not previously notified and did not have an opportunity to brief this issue, we will analyze the proposed endeavor as the CEO of a dental and healthcare management consulting company for this appeal.

Second, contrary to SCOPS' finding that the Petitioner qualifies for EB-2 classification, the record does not establish that the Petitioner holds an advanced degree.[3] For example, the Petitioner has a foreign degree in business administration and the record contains a copy of the foreign degree and its transcript. 8 C.F.R. § 204.5(k)(3)(i). While the record does not contain a credential evaluation, assuming arguendo that the Petitioner's degree is equivalent to a U.S. bachelor's degree, the record does not establish five years of progressive experience in the specialty. 8 C.F.R. § 204.5(K)(2). Specifically, while the Petitioner submitted her resume and several recommendation letters, they do not meet the requirements under 8 C.F.R. § 204.5(g)(1). Notably, the letters do not describe the Petitioner's duties for the positions she held. Further, the authors attest to the Petitioner's skills as a dentist, but do not discuss her employment or progressive experience in business administration. Therefore, they do not establish qualifying experience in the specialty.[4] We further note that SCOPS did not determine whether the Petitioner is an individual of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii). Therefore, the record does not establish that the Petitioner is eligible for EB-2 classification.

[3] We note that if we were to evaluate the Petitioner's proposed endeavor as a "Dentist/Dental Surgeon," she would also not establish EB-2 classification as a member of the professions holding an advanced degree. The record contains a foreign degree in dentistry; however, the record does not sufficiently establish its equivalent degree in the United States. We further note that a doctoral degree is required as a doctorate is customarily required for the specialty in the United States. 8 C.F.R. § 204.5(k)(2). The record does not demonstrate that the Petitioner has obtained a U.S. doctorate or the foreign equivalent.

[4] 8 C.F.R. § 204.5(g)(1) states, in part, "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered."

Additionally, as discussed above, although SCOPS concluded the Petitioner's proposed endeavor established *Dhanasar's* first prong of substantial merit and national importance, the record does not consistently describe the Petitioner's proposed endeavor and therefore prong one could not have been determined. However, as the Petitioner has not established that she is otherwise eligible for a national interest waiver, we need not reach, and therefore reserve, the issues of the Petitioner's eligibility for the EB-2 classification and *Dhanasar's* prong one.[5]

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Matter of Dhanasar*, 26 I&N Dec. at 890. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.*

The Petitioner highlights her foreign bachelor's degree in dentistry, specialized training in advanced dental procedures, and experience as an educator in orofacial harmonization. She also states that she is the former owner of a dental practice. The record contains foreign degrees in dentistry, nursing, and business administration, and a certificate for specialization in orofacial harmonization. The record contains evidence of various courses completed and conferences attended in the dentistry field. Notably, the record contains multiple letters of recommendation, which speak to the Petitioner's experience and training in dentistry and orofacial harmonization.[6] However, the Petitioner states on appeal that her "primary function will not involve practicing dentistry." She contends that she will be the owner and CEO of a dental and healthcare consulting company. Although the Petitioner may have education and experience related to dentistry field, it does not establish her skills and knowledge as the owner and CEO of a dental and healthcare management consulting company. *Matter of Dhanasar*, 26 I&N Dec. at 890. The above-mentioned evidence does not sufficiently establish that the Petitioner is well-position to advance her endeavor as the CEO of a dental and healthcare management consulting company.

On appeal, the Petitioner contends that she has experience running a business as she owned the company, [redacted] in Brazil. However, the record indicates this company belongs to the Petitioner's husband. The Petitioner's resume and business plan list her as the owner of a company called [redacted] that offers general dental treatments and cosmetic dentistry. The resume also states that she manages all aspects of the business including overseeing the business' finances, hiring staff, and strategic planning. However, the record does not contain additional corroborating evidence regarding [redacted] A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. Here, the Petitioner's own statements are not sufficient to establish her ownership, role, and experience in the

[5] *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).

[6] We note that the letters of recommendation contain inconsistencies. For example, one letter states that the author met the Petitioner when she joined the team in 2016 where they state they witnessed the Petitioner's "dedication, exceptional skills, and [her] commitment to excellence in dentistry." However, the record establishes that the Petitioner completed her studies in dentistry in 2019. Additionally, the author refers to the Petitioner as "him" multiple times in the letter.

business. Therefore, although she may have training in related fields, the record does not establish she has the skills, knowledge, and record of success to advance her proposed endeavor of owning a dental and healthcare management consulting company.

The record contains a business plan for "Management Consulting" which includes a model or plan for the future activities of the company. *Matter of Dhanasar*, 26 I&N Dec. at 890. In reviewing the business plan, SCOPS determined that the record did not establish that the Petitioner made sufficient progress toward achieving the proposed endeavor. *Id.* In pertinent part, SCOPS concluded that the Petitioner's business plan lacked specificity on startup costs, enough funding to cover the company's expenses, interest of potential clients, and that she did not have a U.S. dental license and therefore would be unable to provide dental services.

On appeal, the Petitioner states that she has addressed these issues and "taken proactive steps to enhance its detail, including refining the projections for startup costs, revenue streams, and client acquisition." However, no additional documents were submitted to corroborate these statements. As stated above, she must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. The Petitioner asserts on appeal that SCOPS erred in stating that she did not meet this element of the second prong because she did not have a U.S. dental license. The Petitioner states she does not need a U.S. dental license as she will not be serving as a dentist, but as the owner and CEO of a dental and healthcare consulting company. She also states that SCOPS erred in noting that she did not provide evidence of clients stating that *Dhanasar* does not require the business to be in operation but allows for future ventures. While we agree this is not a requirement, whether the Petitioner has taken steps toward advancing the endeavor such as obtaining professional licenses, and the attainment of a physical premises or funding are factors to consider. *Matter of Dhanasar*, 26 I&N Dec. at 890; *See also* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. Here, although she has submitted a business plan, the record does not establish the Petitioner has otherwise sufficiently made progress toward advancing the endeavor.

In the response to the RFE, the Petitioner states that her husband's company has sufficient financial funds to support the start of her company. The record contains a foreign bank account statement from the company, her marriage license, and "Articles of Association" for the company with her husband listed as the managing partner. *Dhanasar* states "interest of potential customers, users, investors, or other relevant entities or individuals" as another way a petitioner can establish they are well positioned to advance the proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. However, the record does not establish the Petitioner's husband's company will be providing the funding. The record contains bank statements that appear to be from this company that are not translated into English. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document as required, we accord it no weight as we cannot determine whether it supports their claim. Further, the record does not contain any other documentation to establish this company will invest in her company. Additionally, as stated above, the Petitioner states on appeal that she does not need to show potential clients as an operational company is not a requirement. However, "interest of potential customers, users, investors, or other relevant entities or individuals" is one of the factors we consider to determine

whether the Petitioner is well positioned to advance her proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890.

Therefore, the record does not establish the Petitioner is well positioned to advance her proposed endeavor. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner has not established she is well positioned to advance her proposed endeavor; 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. at 25.

III. CONCLUSION

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

ORDER: The appeal is dismissed.