U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37621091

Date: NOV. 10, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

SCOPS denied the petition in December 2023, concluding that the Petitioner had not established the national importance of his proposed endeavor and had not shown that, on balance, the United States would benefit from waiving the job offer requirement. The Petitioner filed a motion to reconsider under 8 C.F.R. § 103.5, which SCOPS dismissed in October 2024. That decision is now before us on appeal under 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.

To qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either an advanced degree professional or an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates EB-2 eligibility, they must then establish 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 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 alien 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 Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

A motion to reconsider must establish that the prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

In his native Brazil, the Petitioner earned a bachelor's degree in computing in 1996, and worked in a number of management positions in Brazil. In 2013, he established [redacted], a set of affiliated companies that develop vehicle simulators incorporating movement and virtual reality. In 2017, [redacted] established an office in the United States. The Petitioner began working for [redacted] in the United States as an L-1A nonimmigrant in 2018. The Petitioner's proposed endeavor is to continue serving as [redacted] chief executive officer on a full-time basis, while also devoting a smaller amount of time to a separate home design company that he established in Florida in 2015.

SCOPS denied the petition in December 2023, stating that the Petitioner qualifies for the underlying EB-2 classification and had established the substantial merit, but not the national importance, of his proposed endeavor. SCOPS quoted from [redacted] business plan and concluded: "Though the beneficiary's intent may be to impact the broader field by creating a company that will provide virtual reality experiences to deliver a highly realistic immersive experience for participants, the past record and the potential prospective impact of the proposed endeavor point to a single impact with a company." SCOPS also concluded that the Petitioner had not shown 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 motion from that decision, the Petitioner discussed several exhibits submitted in support of the petition, and argued that SCOPS did not appear to have taken that evidence into consideration.

Dismissing the motion in October 2024, SCOPS discussed the Petitioner's assertions on motion, and concluded: "As [the] motion does not provide new facts or gives reasons for reconsideration supported by any pertinent precedent decisions, [the] motion is dismissed per 8 CFR 103.5(a)(4)."

Because the decision before us is the dismissal of a motion to reconsider, rather than the denial of the underlying petition, the only question properly before us on appeal is whether SCOPS erred in concluding that the Petitioner's motion did not meet the requirements for a motion to reconsider.

On appeal from SCOPS' dismissal of the motion, the Petitioner submits a brief that is virtually identical to the previous brief on motion, except for a brief acknowledgment that SCOPS had dismissed that motion. The substantive portion of the brief addresses conclusions from the December 2023 denial of the petition, rather than the October 2024 dismissal of the motion. In essence, the Petitioner seeks to appeal not the dismissal of the motion, but the denial of the underlying petition. The Petitioner, however, must overcome the dismissal of the motion before we will reach further back into the record to the merits of the underlying petition.

In *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006), the Board of Immigration appeals held that "a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision." *Id.* at 58.

The same principle applies here. In this instance, the Petitioner has filed an appeal that relies on the same brief previously filed with the motion to reconsider.

The Petitioner has not established that SCOPS erred in dismissing the motion to reconsider. Because that dismissal is the only question properly before us on appeal, we will dismiss the appeal.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.