U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39083790

Date: NOV. 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an art, drama, and music teacher/entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 the Petitioner had not established eligibility for the underlying EB-2 visa classification and that 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.

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. In this matter, the Petitioner sought eligibility as an individual of exceptional ability. SCOPs determined that the Petitioner had not met three of the six required initial criteria in order to conduct a final merits determination.[1] Therefore, SCOPs determined that the Petitioner had not established eligibility for the underlying classification, and that further consideration of a national interest waiver would serve no meaningful purpose.

[1] Meeting at least three criteria does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

On appeal, the Petitioner solely argues his eligibility for a national interest waiver. He does not address or contest SCOPS' specific findings regarding the underlying EB-2 visa classification.[2] Accordingly, we deem this ground to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

As the Petitioner has not established eligibility for the underlying EB-2 classification, we need not reach, and therefore reserve the Petitioner's appellate arguments regarding his qualification for a national interest waiver. *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).

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.

[2] Although he presents previously submitted documentation on appeal, the Petitioner does not explain how the evidence shows an erroneous conclusion of law or statement of fact in SCOPS' decision of the underlying EB-2 visa classification. *See* 8 C.F.R. § 103.3(a)(1)(v).