U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40268432

Date: NOV. 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a biostatistician, 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 although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer 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). 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.

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

[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).

- On balance, waiving the job offer requirement would benefit the United States.

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

II. ANALYSIS

SCOPS found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional. Based on the evidence in the record that the Petitioner obtained a master of science degree in public health sciences from the [redacted], we agree. SCOPS further found that the Petitioner established both the substantial merit and the national importance of the proposed endeavor. SCOPS denied the petition, however, finding that the Petitioner did not establish that she is well-positioned to advance the endeavor or that, on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner requests that we reconsider SCOPS' denial, asserting that SCOPS did not fully consider the evidence in the record and that she has established eligibility. For the reasons discussed below, we withdraw SCOPS' finding regarding the first *Dhanasar* prong and conclude that the Petitioner has not established this requirement. Additionally, we agree with SCOPS that the Petitioner has not established eligibility under the second prong. For these reasons, the Petitioner has not established eligibility for a national interest waiver.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* 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.*

The Petitioner did not clearly define her proposed endeavor with the initial filing. In the initial filing, Petitioner's counsel stated that the Petitioner's proposed endeavor is "to continue her work in biostatistics and data science research and their clinical applications through studies in epilepsy, suicide, public health, and pharmaceutical sciences, allowing new provisions of laboratory technologies to the science and clinical community and related healthcare industry." The Petitioner submitted evidence of the research that she was participating in as a Ph.D. candidate. The Petitioner, however, did not submit her own statement describing her proposed endeavor.

SCOPS issued a request for evidence (RFE), noting that the Petitioner is a research assistant whose proposed endeavor is unclear. SCOPS advised the Petitioner that continuing employment in one's position, field, or industry is not an endeavor sufficient to evaluate under the *Dhanasar* analytical framework. SCOPS requested that the Petitioner submit, among other evidence, a detailed personal statement that provides specific insight into her proposed endeavor and what she intends to do as a research assistant.

In response to the RFE, the Petitioner submitted a statement in which she stated that her proposed endeavor is "continuing biomedical and pharmaceutical research through conducting clinical trials developing non-opioid, non-addictive treatments and improving clinical trial design and data analysis." The Petitioner provided evidence that, since the initial filing, she had completed her Ph.D.

program and had begun working as a biostatistician at a pharmaceutical company that is currently conducting clinical trials on a [redacted] non-opioid pain medication. In support of the national importance of the proposed endeavor, the Petitioner emphasized the importance of developing non-opioid pain medications due to the ongoing opioid crisis in the United States, the significant number of Americans who suffer from chronic pain, and the significant potential for a non-opioid pain medications to provide safe and effective treatment without the risks associated with narcotic drugs.

We acknowledge the evidence in the record regarding the opioid epidemic and its impact on public health. We also acknowledge the Petitioner's claims that the continued development of non-opioid, non-addictive pain management therapies as an alternative to opioid medications has the significant potential to address the opioid epidemic. The evidence in the record, provided in response to the RFE, is persuasive of the importance of the clinical trial projects on which the Petitioner is currently working.

Nevertheless, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). 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), (b)(8), (b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform with USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Here, the Petitioner did not clearly define a proposed endeavor at the time of filing, but provided evidence related to conducting biostatistics and data science research in an academic setting. The evidence submitted in response to the RFE, instead of providing clarification as to the Petitioner's proposed endeavor as of the time of filing, described a new endeavor based upon the Petitioner's current employment developing and conducting clinical trials at a pharmaceutical company. While the Petitioner's employment is in the field of biostatistics, the evidence submitted in response to the RFE otherwise bears little resemblance to the Petitioner's circumstances at the time of filing. The evidence in the record does not establish that, at the time of filing, the Petitioner possessed a "specific endeavor that [she] proposes to undertake," and therefore does not establish the Petitioner's eligibility at the time of filing. *See Matter of Dhanasar*, 26 I&N Dec. at 889.

While we do not minimize the work that the Petitioner is pursuing through her newly obtained employment, when an employment-based preference petition is filed, the petitioner establishes a priority date for a visa number assignment as of that filing date. *See Matter of Katigbak*, 14 I&N Dec. at 49. Allowing a petition to be approved if the beneficiary becomes eligible under a new set of facts that did not exist at the time of filing would be contrary to the preference system established by statute and regulation. *See id.* Because the Petitioner has not sufficiently described her proposed endeavor as of the time of filing, we are unable to ascertain either its substantial merit or its national importance. We therefore withdraw SCOPS' finding that the Petitioner established eligibility under the first *Dhanasar* prong and conclude that the Petitioner has not met this requirement.

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.*

As discussed above, the record does not sufficiently describe the Petitioner's proposed endeavor. This impedes our ability to ascertain not just its substantial merit and national importance, but also whether the Petitioner is well-positioned to advance it. For that reason, we must conclude that the Petitioner also has not established eligibility under the second prong.

Nevertheless, we note that were we to accept the Petitioner's revised proposed endeavor as described in response to the RFE, we would agree with SCOPS that the record is insufficient to establish that she is well-positioned to advance it. We agree with SCOPS that the record shows that the Petitioner possesses relevant education and expertise, but it is not sufficient to show either a record of success in related or similar efforts, nor does the record show sufficient interest of potential users, investors, or other relevant entities in her work. Although the Petitioner authored and coauthored research in Ph.D. program, as SCOPS pointed out, the record does not show that the Petitioner obtained funding for and then led research projects. Additionally, the record is not sufficient to demonstrate, in her current job as a biostatistician with a pharmaceutical company, the extent of her role in the clinical projects described and therefore the extent to which she may be credited with their success or responsible for advancing them. By contrast, in *Matter of Dhanasar*, we noted that the petitioner had received "consistent" government funding of research projects in which he played a "significant" role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many of the grants. *Matter of Dhanasar*, 26 I&N Dec. at 893, Fn. 11.

The Petitioner did not sufficiently define a proposed endeavor at the time of filing and, in response to the RFE, sought to rely upon a new set of facts to establish eligibility. The record, therefore, does not establish the Petitioner's eligibility under either the first or second prongs as of the time of filing. 8 C.F.R. § 103.2(b)(12). Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding her eligibility under the third *Dhanasar* prong. *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).

III. CONCLUSION

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

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.