U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39680502

Date: OCT. 01, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an information technology (IT) program manager, 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 that the record did not establish the Petitioner's eligibility for the EB-2 classification as an alien of exceptional ability. SCOPS also concluded that the Petitioner did not establish that he merits a waiver of the classification's job offer requirement, and thus of a labor certification. 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.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, 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.

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,[3] 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.

Id.

II. EXCEPTIONAL ABILITY

The Petitioner does not claim to be an advanced degree professional, but bases his claim to eligibility for the EB-2 classification on qualifying as an alien of exceptional ability. SCOPS determined that the Petitioner met only two of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii), relating to his possession of a degree, diploma, or certificate from an institution of learning relating to his area of exceptional ability, and his ten years of experience in the occupation being sought. Because SCOPS determined that the Petitioner did not meet at least three of the evidentiary criteria, they did not conduct a final merits determination.

On appeal, the Petitioner challenges SCOPS' conclusion regarding two of the evidentiary criteria relating to his membership in professional associations and recognition for his achievements and significant contributions to the industry or field.[4] We conclude that the Petitioner has not established that he meets at least three of the evidentiary criteria.

A. Membership in Professional Associations

The evidentiary criterion at 8 C.F.R § 204.5(k)(3)(ii)(E) requires evidence of the alien's membership in professional associations. SCOPS determined that although the Petitioner had established his membership in two associations, the Association of IT Professionals (AITP) and the Information

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).
[3] *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).
[4] The Petitioner does not claim to meet the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (D).

Systems Audit and Control Association (ISACA), the record did not establish that either association qualifies as a professional association. On appeal, the Petitioner reiterates that he is a member of these associations, but does not directly challenge SCOPS' determination that because he did not establish that either association requires its members to be professionals as defined at 8 C.F.R. § 204.5(k)(2), they have not been shown to be professional associations. We agree with SCOPS' conclusion that the Petitioner has not established that he meets this criterion.

B. Recognition for Achievements and Significant Contributions to the Industry or Field

The evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) calls for evidence of recognition for achievements to the industry or field by peers, governmental entities, or professional or business organizations. SCOPS determined that the reference letters from the Petitioner's peers, clients, and employers did not show recognition for achievements and significant contributions to the IT/digital marketing industry or field.

On appeal, the Petitioner asserts that the letters "affirm his exceptional skills and noteworthy contributions," but does not mention a specific achievement or contribution to the industry evidenced by the letters. Our review of the letters shows that while they describe projects completed by the Petitioner on behalf of his customers and are generally complimentary of the work performed, they do not demonstrate achievement or significant contributions beyond that customer to the IT or digital marketing industry or field. For example, S-S-C- describes how the Petitioner's company I-A- LTDA was performing the web marketing and search engine optimization (SEO) functions for one of the brands managed by his company, which he credits for a growth in sales. Similarly, L-M-A-C- writes that his company also hired the Petitioner to manage web marketing and SEO, which led to increased visits to the company's website and revenue growth. Other letters provide similar narratives about the Petitioner's work for his clients. While these letters show that he has successfully provided services to businesses, they do not constitute recognition for significant contributions to the broader field or industry. Accordingly, we conclude that the Petitioner has not established that he meets this criterion.

C. Final Merits Determination

Based on the foregoing analysis, the Petitioner has not established that he meets at least three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). Because he did not satisfy the initial evidence requirements, we need not conduct a final merits determination to determine whether the totality of the evidence shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. In light of the above, the Petitioner has not established eligibility for the EB-2 classification as an alien of exceptional ability.

III. NATIONAL INTEREST WAIVER

The remaining issue is whether the Petitioner has established that he merits a national interest waiver of the EB-2 classification's job offer requirement. He proposes to work as an IT project manager, providing online marketing strategies to clients through his own company, I-A- LLC. SCOPS concluded that the Petitioner did not establish that he merits a waiver, and after review of the brief and the evidence on record we agree with that conclusion.

A. Substantial Merit and National Importance

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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.*

SCOPS determined that the Petitioner had established by a preponderance of the evidence that his proposed endeavor was of substantial merit. Based upon the governmental and industry reports concerning the benefits of IT project management to businesses in the United States, we agree.

Turning to the national importance of the Petitioner's proposed endeavor, SCOPS concluded that its potential prospective impact would be limited to the Petitioner, his company, and its clients. Like the petitioner's proposed teaching activities in *Dhanasar*, SCOPS determined that the endeavor would not have a broader impact on the IT and digital marketing field.

In his brief, the Petitioner asserts that his proposed endeavor "is set to bring significant advancements and enhancements, bearing wide-ranging implications for the United States," apparently based on his company's proposed use of artificial intelligence in implementing its online marketing strategies. But the record does not indicate that the company's use of artificial intelligence tools would be innovative in the industry, or that serving its clients in this manner would otherwise potentially impact the industry at a broader level.

The Petitioner also asserts that his company intends to operate in areas designated as "HUBZones" by the U.S. Small Business Administration, thereby stimulating economic growth and job creation in underserved communities. *Dhanasar* makes clear that national importance may be demonstrated even through endeavors focusing on one geographic area in the United States, including those having significant job creation potential or "other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. But the Petitioner does not respond to SCOPS' conclusion that he did not establish how locating his business in an underutilized business zone would result in job creation in an economically depressed area. Further, while the Petitioner's business plan projects the creation of 24 direct jobs in its first five years of operation, he has not shown that this projected level of employment would constitute a substantial positive economic effect for the area.

In addition, the Petitioner asserts that his years of experience in online marketing and website optimization will allow him to successfully manage his business, thus leading to an economic impact to the U.S. economy. However, factors such as a petitioner's skills, knowledge, and record of success in similar efforts and their plan for future activities are considered under the second prong of the *Dhanasar* analytical framework, where we evaluate whether they are well positioned to advance their proposed endeavor. *Id.*

Finally, the Petitioner references evidence in the record regarding the success and prevalence of foreign-born entrepreneurs in the United States. While we acknowledge the important role that immigrant entrepreneurs have in the U.S. economy, the Petitioner does not explain how this information is relevant to the potential prospective impact of his specific proposed endeavor.

Per the foregoing analysis, we conclude that the Petitioner has not shown that his proposed endeavor of establishing and managing a consultancy business providing SEO and online marketing services would be of national importance. Accordingly, he has not established that he meets the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner has not established his eligibility for the EB-2 classification as an alien of exceptional ability. In addition, the Petitioner has not established that his proposed endeavor is of national importance. A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their eligibility for a national interest waiver. Because the Petitioner is ineligible for a national interest waiver, we decline to reach and hereby reserve the issue of the Petitioner's qualification under the second and third prongs. *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.