U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39797464

Date: OCT. 6, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is an artist who 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 (NIW) 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 Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but he did not merit a discretionary waiver of the job offer requirement in the national interest. The matter 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. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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
- 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 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).

Id.

II. NATIONAL INTEREST WAIVER

The Petitioner earned a foreign equivalent to a U.S. master's degree. As his proposed endeavor, he provided the following information when he responded to SCOPS' request for evidence:

> I plan to expand my artistic presence in the U.S. by collaborating with major galleries and museums to exhibit my oil paintings and participating in national lever drawing competitions, ensuring that my work reaches a broad audience and contributes to the country' s thriving art scene.
>
> . . . .
>
> Beyond my artistic practice, I am committed to fostering education in the U.S. painting community. I will lead workshops and mentor emerging artists to ensure that traditional oil painting techniques continue to evolve while integrating contemporary artistic trends. My goal is to contribute to the U.S. economy by actively participating in the American art market, collaborating with galleries and collectors, and generating economic growth through exhibitions and sales.
>
> Through cross-cultural collaborations, I aim to strengthen the U.S. art community' s connection with the global art scene, fostering international artistic dialogue and making American art more influential worldwide.

The Petitioner presented a plan that eventually led to opening his own art studio.

A. Substantial Merit and National Importance

The first prong, 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.* When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the alien will work. Rather, we focus on the "the specific endeavor that the alien proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *Id.* A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area, for instance" (*Id.* at 890), or has the potential to widely advance and broadly affect U.S. strategic interests (*Id.* at 892).

USCIS policy also provides that "if the evidence of record demonstrates that the person's proposed endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance." *See generally* 6 *USCIS Policy Manual* F.5(D)(3), https://www.uscis.gov/policy-manual (citing *Matter of Dhanasar*, 26 I&N Dec. at 889–90, 892).

SCOPS acknowledged the Petitioner's endeavor had substantial merit, but concluded it fell short of being of national importance. On appeal, the Petitioner identifies errors in SCOPS' decision and claims they did not consider all of the evidence.

Despite two harmless errors the Petitioner identifies on appeal, we largely agree with SCOPS that he has not demonstrated the national importance of his endeavor. The errors relate to including a reference to the Petitioner being a researcher instead of an artist, and that the record did not include a plan describing how he would continue his work in the United States. But even the Petitioner admits that SCOPS discussed the business plan he submitted in his response to the request for evidence. We therefore consider these as harmless errors.

It is not enough to demonstrate errors in an agency's decision; a petitioner must also establish they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016). As the Petitioner has not demonstrated he was prejudiced by SCOPS' error, such a lapse in propriety is harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203.

Although the Petitioner discusses the business plan for his art studio in the appeal, he argues SCOPS erred by not further discussing the plan's merit. But SCOPS favorably found his endeavor to have substantial merit, so this is not an error and we will not discuss it any further.

The Petitioner also discusses a support letter in the appeal noting the author holds him in high regard and they plan a joint artistic venture and this demonstrates that SCOPS erred in determining "that the petitioner's referees [sic] 'do not speak to his future endeavor', which is contradictory to" the support letter. But the portion of SCOPS' decision discussing the Petitioner's future endeavor was under their prong two analysis regarding whether he is well positioned to advance his endeavor and it is not applicable to our prong one evaluation. And the Petitioner does not identify any additional errors on SCOPS' part, nor does he adequately refute their determination that his endeavor will "impact the field . . . more broadly" and that it has "broader implications" *Matter of Dhanasar*, 26 I&N Dec. at 893, 889.

Because the Petitioner has not demonstrated SCOPS erred nor sufficiently established the national importance of his proposed endeavor as required by *Dhanasar's* first prong, he has not demonstrated eligibility for an NIW of the job offer requirement.

B. We Reserve *Dhanasar's* Remaining Second and Third Prongs

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 n.8 (BIA 2025) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

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.