U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39909544

Date: OCT. 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an electronics engineer in telecommunications, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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.

Id.

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] Therefore, the remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner states that he is an electronics engineer "with expertise and 28 years of experience in the field of telecommunications, project management, and wireless network optimization." He initially stated that his proposed endeavor "will involve the establishment of a technology company, the development of a software solution, and the formation of strategic partnerships with medium and small mobile operators … to improve the quality of wireless networks, promote technological development, and bolster the resilience of the national infrastructure." He further stated that his proposed endeavor is "to improve the U.S. wireless communication infrastructure by leveraging simple network management protocol (SNMP) and artificial intelligence (AI) tools to monitor, manage, and predict future network behaviors, thus enhancing network efficiency, capacity, and availability."

With the initial filing the Petitioner submitted his resume, evidence of his education and experience, and certificates of achievement in telecommunications and project management. He submitted articles and industry reports on U.S. wireless infrastructure and electronics engineering labor statistics. The Petitioner submitted a statement describing his proposed endeavor and claimed eligibility for a national interest waiver, as well as recommendation and support letters. The Petitioner also submitted a letter of interest from a telecommunications professional and former colleague stating an intent to collaborate with the Petitioner on his proposed endeavor.

Following initial review, SCOPS issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver, including a more detailed description of the proposed endeavor. The Petitioner's response to the RFE included an additional personal statement, a business plan and business registration documents, an expert opinion letter, additional letters of support, and additional articles and industry reports.

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[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).

[2] The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in engineering and has more than five years of progressive post-baccalaureate experience in telecommunications.

In response to the RFE, the Petitioner provided the following additional description of his proposed endeavor:

> My proposed endeavor is to develop and implement AI-driven telecommunications solutions to optimize mobile network efficiency, enhance cybersecurity, and expand connectivity in underserved areas across the United States. I will leverage Simple Network Management Protocol (SNMP) and design and deploy an advanced AI-powered Self-Organizing Network (SON) system to automate network deployment, optimize spectrum utilization, and fortify mobile network security through real-time threat detection and automated response mechanisms.

Dr. [redacted], professor of economics with [redacted] University, describes the Petitioner's proposed endeavor in his expert opinion letter. Dr. [redacted] states. "[The Petitioner] intends to establish a technology consulting and innovation firm specializing in telecommunications network optimization. His services will enable mobile network providers to increase network speed for customers and availability of high-performing mobile networks across the country ..."

The Petitioner's business plan for his Wyoming-registered company, [redacted], LLC, states that the Petitioner "endeavors to modernize and secure mobile telecommunications infrastructure across the United States through the development of AI-DANI, a proprietary software solution." The Petitioner also provided a description of his company's software product, AI-DANI (Artificial Intelligence-Driven Dynamic Adaptive Networking Intelligence).

After reviewing the Petitioner's RFE response, SCOPS determined that the Petitioner submitted sufficient evidence to demonstrate that his proposed endeavor has substantial merit. However, SCOPS concluded that, in response to the RFE, the Petitioner "introduced a new proposed endeavor" that was not raised in the initial petition. Specifically, SCOPS stated that in the initial petition the Petitioner proposed to establish a technology company, while in response to the RFE the Petitioner "introduced his endeavor to design and deploy a proprietary system called [AI-DANI]." SCOPS determined that the Petitioner "does not overcome the issue that the evidence of his technology business materially changed the proposed endeavor after filing his petition."

SCOPS further concluded that the Petitioner had not demonstrated that his proposed endeavor has national importance, that he is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. However, SCOPS did not discuss any of the three prongs of the *Matter of Dhanasar* framework in detail or provide an analysis of the evidence in the record.

On appeal, the Petitioner submits a brief and asserts that SCOPS misinterpreted the expanded details of the proposed endeavor and contests that there was any material change. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

Based on our de novo review of the record, we conclude that the evidence presented in response to the RFE did not constitute a material change in the proposed endeavor. Rather, the documentation provided

was to further document and explain how the Petitioner qualified for a national interest waiver based on the nature of the proposed endeavor discussed in the initial filing.

As noted above, with the initial filing, the Petitioner stated that his proposed endeavor "will involve the *establishment of a technology company* [and] the *development of a software solution*" to improve U.S. telecommunications efficiency (emphasis added). In the RFE response, the Petitioner provided additional details about his proposed endeavor, as well as supporting documentary evidence, including a business plan, business registration documents, a description of the software product he developed (AI-DANI), and an expert opinion letter. Although the Petitioner did not identify his technology company or software solution in the initial filing, the additional details and supporting evidence submitted in response to the RFE identify the company as [redacted], LLC and the software solution as AI-DANI. SCOPS does not explain how identifying these components of the Petitioner's plan constitutes a material change to the proposed endeavor. An officer must fully explain the reasons for denying the application in order to allow the Petitioner a fair opportunity to contest the decision and to afford us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

As SCOPS concluded in error that the Petitioner's RFE response materially changed the proposed endeavor, it did not analyze or discuss the evidence in the record and whether it demonstrated the Petitioner's eligibility for a national interest waiver. Therefore, we will withdraw SCOPS' decision and remand the matter for entry of a new decision. On remand, SCOPS should provide a full and complete analysis of the Petitioner's specific proposed endeavor and determine whether it is of national importance, whether he is well-positioned to advance the proposed endeavor, or whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. If SCOPS concludes that the Petitioner does not meet the national interest waiver requirements as set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, the decision should adequately explain the reasons for ineligibility.

III. CONCLUSION

For the reasons outlined above, we are withdrawing SCOPS' decision and remanding the matter so that SCOPS may determine whether the Petitioner has established eligibility for a national interest waiver as a matter of discretion. SCOPS should properly apply all three prongs of the *Dhanasar* analytical framework to determine if the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. SCOPS may request any additional evidence considered pertinent to the new determination and we express no opinion regarding this matter's ultimate disposition.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.