U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39724345

Date: OCT. 21, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a cloud solutions architect, 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 although the Petitioner established his eligibility for EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the job offer requirement 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. 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.

Id.

II. ANALYSIS

SCOPS determined that the Petitioner qualifies as an advanced degree professional based on evidence that he has the foreign equivalent of a U.S. bachelor's degree in electronics engineering followed by more than five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree"). The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement is in the national interest. SCOPS determined the Petitioner's proposed endeavor has substantial merit and he is well-positioned to advance it, but concluded that he did not establish the proposed endeavor's national importance and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner contends that SCOPS mischaracterized the nature of his proposed endeavor by observing that he intends to "work as a Cloud Solution Architect for [redacted] Specifically, the Petitioner emphasizes that although he was working for [redacted] at the time of filing, he did not state in the record that he would pursue his proposed endeavor through continuing employment with [redacted] He further asserts that SCOPS' decision does not reflect consideration of the evidence he submitted in response to a request for evidence (RFE).

The Petitioner's assertions are supported by the record. SCOPS correctly stated that the Petitioner indicated his intention "to develop a system design, continuous integration and cloud technologies regime, which will advance resilient software development, and testing programs, to enhance efficiency, reliability, and security of integrated defense and security systems across various critical sectors." However, in discussing the national importance of the endeavor, SCOPS noted that he "had not substantiated how the specific endeavor (which is working as a Cloud Solution Architect for [redacted] would have global or national implications to the field." In the following paragraph, SCOPS noted that the petitioner "has not specifically indicated if he will continue to work for his current employer or work for a different employer in his claimed proposed endeavor" but noted that regardless of the employer, the Petitioner did not show how his endeavor would have broader implications that extend beyond an employer and its clients.

The Petitioner's initial statement in support of the petition set out his short- and long-term goals for his proposed endeavor. He neither stated nor implied that he would advance his endeavor by continuing his employment with [redacted] Further, in his statement in response to the RFE, the Petitioner clarified that "it is neither my proposed endeavor nor my long-term goal to seek employment in the U.S., or continuing employment in my current position, on a long term." Rather, the Petitioner stated he intends to establish and lead "a Software Solutions firm that will offer system design, integration solutions and cloud engineering along with vulnerability and testing intelligence consulting services to both large organizations and small and medium-sized enterprises (SMEs) as well as public agencies." The Petitioner also indicated that his firm "will contribute to software integration research and education through the sponsoring of cybersecurity and program integration education programs."

Because SCOPS' determinations with respect to *Matter of Dhanasar*'s first and second prongs were based on an erroneous understanding of the Petitioner's proposed endeavor and how he intends to advance it, the decision did not provide him with sufficient notice regarding evidentiary deficiencies in the record. Further, as noted by the Petitioner, the decision does not reflect SCOPS' consideration of his response to the RFE or sufficiently analyze the record based on the framework set forth in *Matter of Dhanasar*. In fact, the decision contains few references to the evidence the Petitioner submitted in support of the petition, such as supporting letters from experienced professionals in the field, and a detailed "tool kit" the Petitioner submitted for consideration in response to the RFE.

An officer's written decision must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the decision based on the deficiencies addressed above.

On remand, SCOPS should review the entire record in considering whether the Petitioner has provided sufficient detail regarding his proposed endeavor "to develop a systems design, continuous integration and cloud technologies regime" through establishment of his own software consulting firm, and whether he has established eligibility under each of the three prongs of the *Dhanasar* framework.

In determining whether a proposed endeavor has national importance under the first prong, we consider its potential prospective impact. *See Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor may have national importance because it has national or even global implications within a particular field, such as improved manufacturing processes. *Id.* Economically, it may have national importance if the endeavor has the significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *Id.* Moreover, if the record demonstrates that a proposed endeavor has the significant potential to, for example, 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)(1), https://www.uscis.gov/policy-manual.

The Petitioner claims that his proposed endeavor will have broad implications in his field, noting that he will "advance current research and development initiatives," actively disseminate the results of his research through scholarly publications and presentations, "pioneer new solutions to address emerging challenges," influence policy and standards in the field, and "shape the framework within which the industry operates." However, the Petitioner's assertions alone cannot establish the national importance of his proposed endeavor. On remand SCOPS must determine whether the record demonstrates, by a preponderance of the evidence, that the proposed endeavor would have a potential prospective impact that rises to the level of national importance. This analysis should consider whether the petition contains substance that both explains and corroborates how working in the proposed endeavor meets the "national importance" standard. SCOPS should also consider other relevant factors set forth in *Matter of Dhanasar*, including, but not limited to, whether the Petitioner demonstrated that his endeavor would have the significant potential to employ U.S. workers or other substantial positive economic effects. For example, the Petitioner stated that his software consulting firm will "generate multiple job openings for other U.S. persons who would be working with me," but

did not further elaborate on its job creation potential or indicate whether he intends to establish the firm in an economically depressed area.

In determining whether an individual is 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. Although SCOPS previously determined that the Petitioner submitted sufficient evidence to satisfy this prong, it appears its conclusion was based on a mistaken understanding that he would pursue his endeavor through continuing employment in a software consulting role with [redacted] or a similar employer, rather than through an entrepreneurial endeavor in the software consulting field. On remand, SCOPS should reevaluate the evidence to determine whether the Petitioner established his eligibility under the second prong based upon the factors enumerated in *Matter of Dhanasar* as well as any other relevant factors.

For example, SCOPS may consider whether the lack of specificity in the Petitioner's plan to establish his own software consulting firm, which was described for the first time in response to the RFE, sufficiently demonstrates a "model or plan for future activities." Also related to the Petitioner's plan for future activities, SCOPS may consider whether there is sufficient evidence in the record reflecting feasible plans for the financial support of his endeavor or evidence of interest from prospective or potential clients or customers.

Finally, the third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. On remand, SCOPS should reevaluate the Petitioner's claims and evidence related to the third prong in light of his intention to establish his own consulting firm in the United States, as its original evaluation under this criterion was based on a determination that the Petitioner would advance his endeavor through continued work with his employer. SCOPS should consider each factor relevant to the third prong's balancing analysis and explain the decisional weight accorded to each factor.

III. CONCLUSION

For the reasons discussed, we will withdraw SCOPS' decision and remand this matter for further consideration and entry of a new decision. On remand, SCOPS should review the entire record, including the Petitioner's submission on appeal, and determine whether he has established eligibility under each of *Dhanasar*'s three prongs. SCOPS may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

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