U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36817461

Date: SEP. 23, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a private airline, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 that the Beneficiary merited a waiver of the EB-2 classification's job offer requirement, and thus of a labor certification, as a matter of discretion. 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.

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 that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] 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

[1] 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).

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,[2] 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 Beneficiary proposes to continue to work for the Petitioner as an assistant director of operations and as a pilot of midsize business aircraft.[3] The Petitioner did not initially indicate whether it was seeking classification of the Beneficiary as an advanced degree professional or as an alien of exceptional ability, but responded to SCOPS' request for evidence (RFE) with additional evidence in support of only the latter. In its decision, SCOPS concluded that the Beneficiary qualified as an alien of exceptional ability, but there were inconsistencies in its analysis and conclusion of two of the criteria under 8 C.F.R. § 204.5(k)(3)(ii). Also, while SCOPS determined that the Beneficiary met the requisite three of the six evidentiary criteria, it did not conduct a final merits determination.[4] As discussed in detail below, our review of the record shows that the Petitioner did not meet the requirements of at least three of the evidentiary criteria, and we withdraw SCOPS' conclusion in that regard.

A. Official Academic Record

The evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) calls for evidence in the form of an official academic record which shows that the alien has a degree, diploma, certificate or similar award relating to the area of exceptional ability. That document must have been issued by a college, university, school, or other institution of learning.

SCOPS listed the evidence submitted in support of this criterion, and concluded without analysis that the Beneficiary meets this criterion. We disagree and withdraw SCOPS' determination.

The record includes several *latu sensu* or specialization certificates or diplomas from entities including [redacted] in areas such as

[2] *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).
[3] We note that SCOPS' decision incorrectly refers to the Beneficiary as the Petitioner.
[4] SCOPS concluded only that because the beneficiary met the requisite three criteria, "this criterion has been met," and went on to discuss the Beneficiary's eligibility for a national interest waiver.

customer relations management, e-business, and socioenvironmental management. But this criterion requires that any diplomas, certificates, or other similar awards be related to the area of exceptional ability. The Petitioner has not established that any of these *latu sensu* or specialization certificates relate to his proposed endeavor as an assistant director of operations and commercial pilot.

Also included in the record are two English translations of foreign documents said to be from the [redacted] While the translations indicate that these documents relate to the Beneficiary's training as a pilot and a pilot examiner, the originals of these documents were not submitted and thus cannot be verified.

In addition, the Petitioner submitted a "Certificate of Accomplishment" from the [redacted] for the Beneficiary's completion of the "Refresher Instructor and Examiner Course" and another certificate from [redacted] documenting his completion of the "Instructor Ground School" course. However, the record does not include evidence showing that either of the granting entities are schools or other institutions of learning.

For the reasons given above, we withdraw SCOPS' determination and conclude that the Petitioner has not established that the Beneficiary meets this criterion.

B. Ten Years of Experience in the Occupation Sought

The evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) calls specifically for letters from current of former employers showing at least 10 years of full-time experience. SCOPS' decision listed four letters submitted by the Petitioner, but noted that none of the "contracts" included complete dates of employment or descriptions of the Beneficiary's duties.[5] But SCOPS went on without further analysis to incongruously conclude that the criterion had been met. Based on our review, the letters from [redacted] sufficiently establish that the Beneficiary has at least 10 years of full-time experience as a pilot. Accordingly, we withdraw SCOPS' determination and conclude that the Beneficiary meets this criterion.

C. License to Practice the Profession

The evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) requires evidence of a license to practice the profession or certification for a particular profession or occupation. In its decision, SCOPS acknowledged the Beneficiary's receipt of a temporary airman certificate from the Federal Aviation Administration (FAA), but stated that the criterion was not met because there was insufficient information about the license in the record. SCOPS conclusion, however, stated that the criterion had been met without additional explanation. We note that in response to SCOPS' request for evidence (RFE), the Petitioner submitted a copy of the Beneficiary's Airline Transport Pilot license, granted after the issuance of the temporary license but prior to the date the petition was filed. Therefore, the Petitioner has established that the Beneficiary meets this criterion.

[5] The regulation at 8 C.F.R. § 204.5(g)(1) specifies that evidence relating qualifying experience must be letters including the name, address, and title of the writer and a "specific description of the duties performed by the alien." It goes on to state that other documentation relating to an alien's experience will be considered if the employer letters are unavailable.

D. Salary or Other Remuneration Demonstrating Exceptional Ability

The evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) calls for evidence that the alien has commanded a salary or other remuneration which demonstrates exceptional ability. The Petitioner submitted a letter stating that the Beneficiary earns $125,000 per year as a pilot and assistant director of operations. This evidence sufficiently shows the Beneficiary's salary, but the Petitioner did not submit evidence showing that this level of remuneration demonstrates exceptional ability in the Beneficiary's field. Accordingly, this criterion has not been met.

E. 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. In its response to SCOPS' RFE, the Petitioner pointed to evidence of the Beneficiary's employment with the [redacted] and as a pilot with the [redacted] However, this criterion specifically calls for membership in professional associations, and the Petitioner has not established that either of these employers are a professional association. Further, the records does not include evidence of membership requirements for either employer. For these reasons, we conclude that the Petitioner has not established that the Beneficiary meets this criterion.

F. 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. A former colleague of the Beneficiary who is also know employed with the Petitioner states that he and the Beneficiary developed a safety manual to meet FAA requirements, and claims that the FAA "recognized" the manual as being in compliance with requirements. But the record does not include any evidence from the FAA which corroborates this statement, and it is not apparent that the agency's acceptance of a technical manual is akin to acknowledgment of significant contributions made by that manual and its authors.

The Petitioner also noted in its RFE response that the Beneficiary, in his role as a professor and consultant at the [redacted] ensures that businesses comply with regulations of the International Civil Aviation Organization (ICAO). It refers to an email and a written statement from university officials in support of this role, but neither of these documents show recognition from either ICAO or the university. Rather, using identical language, they discuss the work of the ICAO and the importance of spreading knowledge of its regulations. While the writers of these statements agree on the importance of the Beneficiary's work as a consultant and auditor, the statements do not name a specific achievement or contribution by the Beneficiary.

For the reasons presented above, we conclude that the Petitioner has not established that the Beneficiary meets this criterion.

G. Final Merits Determination

In a final merits determination, we consider the totality of the evidence to determine whether a petitioner has established that the beneficiary possesses a degree of expertise significantly above that

ordinarily encountered in the sciences, arts, or business. Here, despite concluding that the Beneficiary did meet the initial evidence requirement for the requested EB-2 classification by meeting at least three of the criteria under 8 C.F.R. § 204.5(k)(3)(ii), SCOPS did not then conduct a final merits determination. While we disagree with SCOPS's conclusion and determine that the Petitioner has not established that the Beneficiary meets at least three criteria, we will nevertheless proceed with a final merits analysis below.

The record indicates that the Beneficiary has worked as a pilot, in Brazil and the United States, for several years. In addition, several certificates held by the Beneficiary show that he qualified as a pilot instructor and examiner, and reference letters show that he also performed in this role. Further, the Beneficiary was accredited by the International Business Aviation Council to conduct audits, and appears to have done so while employed by the [redacted] While this evidence indicates that he has broad experience in the field of aviation, it does not establish that this experience sets him apart from other airline pilots to show a degree of expertise significantly above that ordinarily encountered in his field. For example, the Petitioner did not show how the licenses and certifications held by the Beneficiary compared to that of other pilots, or that his salary reflects recognition of his exceptional ability when compared to his peers.

In addition, while the Petitioner submitted reference letters from some of the Beneficiary's former employers and colleagues which were generally complimentary of the way he accomplished his duties, none of them indicate that his professional achievements were recognized as rising above that of others in his field. For example, G-d-M-C- of [redacted] praises the Beneficiary's "safe and disciplined attitude" and "high level of reliability and technical competence." And M-G- of [redacted] writes that he "display[ed] the highest levels of professionalism." But these letters do not identify contributions, accomplishments, knowledge, or skills possessed by the Beneficiary which mark him as exceptional among others in his field.

Finally, while the Beneficiary holds several specialization certificates in business and management, the record does not show that these are related to the fields in which he intends to work in the United States and thus served to enhance his expertise as a pilot or operations director or elevate his standing amongst his peers in those areas.

The record as a whole, including the evidence specifically discussed above, does not establish the Beneficiary's eligibility as an alien of exceptional ability. While SCOPS determined that the Beneficiary met the requisite three evidentiary criteria and thus qualifies for the EB-2 classification, we withdraw that determination.

III. NATIONAL INTEREST WAIVER

The Petitioner has not established that the Beneficiary is eligible for the underlying EB-2 classification, so he is not eligible for a national interest waiver. However, because SCOPS' decision focused on whether the Beneficiary merited a waiver, we will consider this issue on appeal.

As noted above, the Beneficiary proposes to work for the Petitioner in the position of assistant director of operations and commercial pilot. Using the *Dhanasar* analytical framework to evaluate the Petitioner's claim to a national interest waiver, SCOPS concluded that the Petitioner did not establish that the Beneficiary's proposed endeavor met the first, second, or third prongs. Per the foregoing discussion, we conclude that the Petitioner has not shown that the Beneficiary merits a national interest waiver.

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.*

In its decision, SCOPS determined that the Petitioner had not sufficiently described the Beneficiary's proposed endeavor as an assistant director of operations, and thus had not shown how that endeavor was of substantial merit. The Petitioner provided the following description when responding to SCOPS' RFE:

> [The Beneficiary's] duties as Assistant Director of Operations include operational control, compliance of all FAA regulations, designing training programs, medical records and compliance for our staff of pilots. [The Beneficiary] regularly organizes safety and training classes for all pilots on staff for [redacted]
>
> [The Beneficiary] works directly with the FAA ensuring the company and staff pilots are in compliance with the FAA, DOT, TSA and company policy.

While this additional information does not match the depth of the proposed endeavor description provided by the petitioner in *Dhanasar*, it is sufficient to show that the Beneficiary proposes to perform compliance and training functions in addition to serving as a pilot for the Petitioner. Based upon this description and the evidence in the record, the Petitioner has sufficiently shown that the Beneficiary's proposed endeavor is of substantial merit in the area of business.

Turning to the national importance of the proposed endeavor, SCOPS concluded that the Petitioner's reliance upon media reports regarding the shortage of pilots in the airline industry was insufficient to show the potential prospective impact of the proposed endeavor. Specifically, SCOPS noted that the Petitioner had not indicated how the proposed endeavor would measurably impact the shortage, and added that any such shortage of qualified workers is addressed through the labor certification process.

On appeal, the Petitioner does not directly respond to SCOPS' conclusion, but reiterates its claim that the proposed endeavor is of national importance because of the shortage of pilots in the United States. It also suggests that because the proposed endeavor would involve flying aircraft throughout the United States, it is inherently of national importance. These assertions are not persuasive.

When determining whether a proposed endeavor is of national importance, we look for the endeavor's broader implications within a particular field. *Matter of Dhanasar*, 26 I&N Dec. at 889. While such implications may be shown to be at a national or even global level within a field, the focus is not on geographic scope but broader impacts of the proposed endeavor, which may include significant potential to employ U.S. workers or other substantial positive economic effects. *Id.* at 890.

Here, as noted by SCOPS, the Petitioner has not demonstrated how the Beneficiary's endeavor of piloting aircraft and serving as the company's assistant director of operations would have broader implications for the aviation industry in the United States. Much like the petitioner's proposed teaching activities in *Dhanasar*, the Petitioner here has not established how the Beneficiary's proposed endeavor would reach beyond the company's internal operations and customers to impact the field more broadly. *Id.* at 893.

Further, our focus under the first prong of the Dhanasar analysis is "the specific endeavor that the foreign national proposes to undertake." Id. at 890. While we acknowledge that the aviation industry, or more specifically the commercial airline industry, is of economic importance to the United States, the Petitioner has not submitted evidence showing the potential benefits to the regional or national economy resulting from the Beneficiary's specific work. In addition, the Petitioner's reliance on evidence of a shortage of airline pilots in the U.S. to show the national importance of the Beneficiary's proposed endeavor is misplaced, as the record does not include evidence demonstrating how his specific endeavor would measurably ameliorate such a shortage.

For the reasons discussed above, the Petitioner has not established that the Beneficiary's proposed endeavor would be of national importance, and he therefore does not meet the requirement of the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the alien. *Id.* 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.*

SCOPS acknowledged the Beneficiary's certifications and experience as a pilot, but noted that this was only one of several factors considered under the second prong of the *Dhanasar* framework. It determined that the reference letters and other evidence did not show a record of success related to the Beneficiary's proposed endeavor.

On appeal, the Petitioner points out that it already employs the Beneficiary in roles encompassed by his proposed endeavor, and that his training and experience demonstrate his qualifications for these

roles. However, possessing the minimum qualifications and necessary licenses or certifications to perform a certain occupation is not sufficient to establish eligibility for a national interest waiver. Per *Dhanasar*, a petitioner cannot qualify for a waiver "just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise." *Id.* at 886, n. 3. While the evidence shows that the Beneficiary has experience as a pilot, it does not establish that by holding those positions and performing his duties he enjoyed a record of success, or attained a level of expertise, sufficient to show that he is well-positioned to not just perform his proposed endeavor but to advance his proposed endeavor.

The Petitioner did not address any of the other enumerated factors under the second prong in his brief. We note that where an alien's proposed endeavor is to continue performing in an occupation and position that they already hold, factors such as whether they have a plan for future activities, progress towards achieving the endeavor, and the interest of others in the endeavor have reduced significance. So the fact that the Petitioner is already qualified to perform his proposed endeavor and presents no plan beyond working for his current employer does not provide significant support for his claim that he is well positioned to advance his endeavor. The Petitioner provides additional evidence on appeal that the Beneficiary designation as its Director of Operations was accepted by the FAA on May 1, 2024, and asserts that this designation and acceptance shows progress towards achieving his proposed endeavor. However, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

Per the above analysis, the Petitioner has not established that the Beneficiary is well positioned to advance his proposed endeavor, and he therefore does not the requirements of the second prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner has not established the Beneficiary's eligibility for the EB-2 classification as an alien of exceptional ability, and we withdraw SCOPS decision. In addition, the Petitioner has not established that the Beneficiary's proposed endeavor is of national importance, and that the Beneficiary is well positioned to advance his proposed endeavor. A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish their eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the third prong of the framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.