U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39483262

Date: SEP. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an automobile mechanic, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 is eligible as an alien of exceptional ability. SCOPS also determined that the Petitioner had not established that the Beneficiary merits a waiver of the EB-2 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.

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 doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. *Id*.

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 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. EXEPTIONAL ABILITY

SCOPS determined that the Petitioner did not establish the Beneficiary's eligibility for the requested EB-2 classification as an alien of exceptional ability[4]. In its RFE response, the Petitioner asserted that the Beneficiary meets three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). Upon de novo review, we conclude that the Petitioner has not established that the Beneficiary meets at least three of the evidentiary criteria and has not shown that he has a degree of expertise significantly above that ordinarily encountered in his field.

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[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.

[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 did not indicate in his initial filing whether he intended to qualify as an alien of exceptional ability or as a member of the professions holding an advanced degree. In SCOPS' request for evidence (RFE), it sought additional evidence relating only to the Beneficiary's eligibility as an alien of exceptional ability, and the Petitioner's response did not include a claim as an advanced degree professional. On appeal, the Petitioner mentions only his eligibility as an alien of exceptional ability.

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.

The Petitioner submitted evidence of the Beneficiary's diploma as an industrial engineer, earned at the [redacted] in Colombia in 2010. This evidence is sufficient to meet 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 or former employers showing at least 10 years of full-time experience. The Petitioner submitted several letters from friends, colleagues, and customers of the Beneficiary, but only one letter from a former employer. E-D- states that he employed the Beneficiary as a maintenance manager from April 2013 to April 2016. However, the regulation at 8 C.F.R. § 204.5(g)(1) indicates that letters providing evidence of qualifying experience shall include a specific description of the duties performed. Because E-D-'s letter lacks such a description, it does not comply with this requirement and does not establish that the Beneficiary had qualifying work experience under this criterion. Accordingly, the Petitioner has not established that the Beneficiary meets this criterion.

C. Degree of Expertise Significantly Above That Ordinarily Encountered

The Petitioner also asserts that the Beneficiary meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), which calls for evidence of a license to practice the profession or certification for a particular profession or occupation. However, the Petitioner asserts that the Beneficiary meets only three criteria, and per the above has not shown that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Since he cannot therefore meet the requisite three criteria for classification as an alien of exceptional ability, we decline to reach and hereby reserve the issue of whether he also possesses a license to practice the profession or a certification for a particular occupation.[5]

The Petitioner has not established that the Beneficiary meets the requisite three evidentiary criteria, and therefore cannot show that he is eligible as an alien of exceptional ability. Thus we need not consider whether the Beneficiary possesses a level of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Nevertheless, our review of the record, including the evidence regarding the Beneficiary's education and training and the reference letters from his former employer, colleagues, and friends shows that he possesses the necessary skills and knowledge to perform the duties of his proposed endeavor, but does not demonstrate that his level of expertise stands out from others in his occupation.

[5] Where a case warrants a dismissal regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *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)).

III. NATIONAL INTEREST WAIVER

The Beneficiary states that he proposes to operate the Petitioner as a mechanic and owner to "giv[e] my close by community needed help with their automotive issues." He indicates that he would like to expand the business by acquiring equipment and employees to "service the greater [redacted] area within 5 years" so that the business becomes "a main competitor in the automotive repair and maintenance industry." Upon de novo review, we conclude that the Petitioner has not established that the Beneficiary's proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

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.*

The Petitioner indicated in Part 6 of Form I-140 that the occupation in which he intends to work in the United States is specialist mechanic, which would involve the "service, maintenance and repair of vehicles and power tools." He did not initially provide further information about his proposed endeavor, so SCOPS issued an RFE seeking this information, amongst other evidence. After review of the Petitioner's statement in response, described above, SCOPS concluded that it was insufficiently specific and thus did not establish that the proposed endeavor had substantial merit.

The *Dhanasar* precedent decision provides examples of how a proposed endeavor may be deemed to be of substantial merit. An endeavor may have "the potential to create a significant economic impact," but also may relate to "the furtherance of human knowledge" without any measurable economic benefits. *Id.* In response to SCOPS' RFE, the Petitioner asserted that the Beneficiary's business has "the potential to hire and train workers" and would have a "broader economic influence that benefit difference [*sic*] type of businesses which will impact the economics of the area." But these assertions are not supported by sufficient documentary evidence in the record, which was requested by SCOPS in its RFE. While the proposed endeavor is in the area of business or entrepreneurialism, very little information has been provided regarding its potential to create a significant economic impact on a sufficiently broad scale. The Beneficiary speaks broadly about "the constant demand of service," his relationship with a business consultant who will help him build the business, and his vision for the business, but the only evidence in the record concerning its potential prospective impact are letters from the Beneficiary's friends and customers praising his professionalism and technical knowledge. The letters are complimentary, but they are insufficient to establish the substantial merit of the proposed endeavor.

Regarding the national importance of the proposed endeavor, *Dhanasar* emphasizes that we look for its broader implications within a particular field or area. *Id.* Such implications may include those that affect a field on a national or global scale, such as medical advances, or those that have "significant potential to employ U.S. workers or has other substantial positive economic effects." *Id.* at 889-890. Here, the Beneficiary's statement indicates that he wishes to expand the petitioning business and employ additional workers. But these stated goals lack any specific details by which the potentiality for hiring can be measured, such as a timeline for hiring, the types of positions which would be filled,

or the potential or likelihood that the Petitioner's business would grow and thus have the need for additional workers. And the Petitioner's statement that it would "impact the economics of the area" also lacks specificity regarding the nature of this impact and sufficient basis in the record to establish any potential substantial positive economic effects.

As the Petitioner has not shown that the proposed endeavor would be of substantial merit or national importance, it has not established that it meets the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

The Petitioner has not established that the Beneficiary is eligible for the EB-2 classification as an alien of exceptional ability. In addition, it has not shown that the Beneficiary's proposed endeavor is of substantial merit or national importance. A petitioner must meet all three prongs of the *Dhanasar* analytical framework in order to establish eligibility for a national interest waiver. Because the Beneficiary has not met the first prong and thus is ineligible for a national interest waiver, we need not reach, and therefore reserve, the issues of his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

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.