U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39461499

Date: SEP. 29, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a professional in the field of agriculture and water resource management, 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 demonstrated his eligibility for classification as an advanced degree professional, he did not establish that a waiver of the job offer requirement, and thus a 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because SCOPS' decision is insufficient for 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.

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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. at 889.

II. ANALYSIS

The record supports SCOPS' determination that the Petitioner, who demonstrated that he has the foreign equivalent of a U.S. master's degree in agriculture, qualifies as a member of the professions holding an advanced degree. Therefore, the issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement is in the national interest.

SCOPS concluded that although the Petitioner established the substantial merit of his proposed endeavor and that he is well-positioned to advance it, he did not demonstrate the endeavor's national importance or that, on balance, waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner contends that SCOPS made a procedural error in adjudicating his petition. Specifically, he emphasizes that the request for evidence (RFE) SCOPS issued on October 30, 2024, failed to provide him with notice of any evidentiary deficiencies regarding his eligibility under *Dhanasar*'s three prongs. He further asserts that SCOPS' decision contains legal and factual errors. The Petitioner requests that the decision be "reversed or remanded for a new, proper adjudication."

Upon de novo review we conclude that SCOPS did not sufficiently analyze the record based on the framework set forth in *Matter of Dhanasar* and did not sufficiently put the Petitioner on notice regarding evidentiary deficiencies in the record, either through the RFE or the decision. While we cannot sustain the appeal based on the record as presently constituted, we will withdraw SCOPS' decision and remand the matter for further consideration and entry of a new decision.

The record reflects that SCOPS' RFE was limited to a request for "an original and properly completed Application for Permanent Employment Certification (ETA Form 9089) . . . or Application for Alien Employment Certification (ETA 750) Part B (Statement of Qualifications of Alien)."[2] However, in its decision denying the petition, SCOPS incorrectly states that "USCIS issued [an RFE] seeking further documentation of national interest waiver." Further in its discussion of *Dhanasar*'s first prong, the decision erroneously states that the Petitioner "was asked to expand" on the nature of his proposed endeavor. SCOPS ultimately found that the Petitioner could not establish his endeavor's national importance, in part, because his response to the RFE did not provide this clarification.

In cases where SCOPS determines that issuance of an RFE is warranted under 8 C.F.R. § 103.2(b)(8)(iii), the RFE should identify the eligibility requirements that have not been established and why the evidence submitted is insufficient; identify any missing required initial evidence; identify examples of other evidence that may be submitted to establish eligibility; and request that evidence. *See generally* 1 *USCIS Policy Manual* E.6(F)(3), https://www.uscis.gov/policy-manual. Here, SCOPS' RFE did not comply with this policy guidance.

[2] The Petitioner complied with this request notwithstanding the fact that he had already submitted a completed and signed Form ETA 750, Part B, with his initial submission.

We also agree with the Petitioner's contention that SCOPS did not sufficiently analyze the evidence of record based on the framework set forth in *Matter of Dhanasar* and therefore did not adequately explain why the evidence submitted was insufficient to demonstrate eligibility. *See* 8 C.F.R. § 103.3(a)(1)(i),(iii) (providing that the decision must explain the specific reasons for denial and notify the affected party of appeal rights); *cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." 26 I&N Dec. at 889. In *Dhanasar* we stated that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field." *Id.* at 890. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.*

Although SCOPS concluded that the Petitioner did not establish that his proposed endeavor is of national importance, it did not specifically address the Petitioner's evidence or the factors outlined in *Dhanasar*. As noted, SCOPS' determination appears to be based primarily on a determination that "the endeavor remains broad and unclear of specifics" and a finding that "the solutions the petitioner proposes have already been addressed by the grants and research of other entities." As noted, contrary to SCOPS' statements, the Petitioner was not "asked to expand on the endeavor" prior to denial of the petition. Nevertheless, the record does include a lengthy statement from the Petitioner that includes sections titled "Business Plan," "Key Impact Metrics," "Job Creation," "Innovation and Technological Advancements" and other information intended to explain the nature of the endeavor and to establish its national importance under *Dhanasar*'s first prong. Based on the conclusions reached in SCOPS' decision, it does not appear that it reviewed this evidence. Further, we agree with the Petitioner that the fact that his endeavor may propose solutions that have been "addressed by the grants and research of other entities," is not relevant to a determination of whether the endeavor has national importance.

Dhanasar's second prong shifts the focus from the proposed endeavor to the individual. 26 I&N Dec. at 890. To determine whether a petitioner 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. *Id.* SCOPS determined that the Petitioner satisfied the second prong but did not address the Petitioner's evidence or any of the factors discussed in *Dhanasar*. The Petitioner established that he has a master's degree in agriculture and provided reference letters describing his skills and professional experience in this field, including his experience with water resource management. However, the record as presently constituted contains little information or supporting evidence related to his model or plan for future activities, any progress he has made towards achieving the proposed endeavor, of whether there is sufficient interest from relevant parties to make his endeavor feasible. Therefore, on remand, SCOPS should consider whether the Petitioner is well-positioned to advance the endeavor based upon the factors enumerated in *Matter of Dhanasar* as well as any other relevant factors.

Finally, SCOPS stated the third prong's balancing analysis and concluded that the Petitioner "has not established 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." However, SCOPS did not adequately explain how the evidence in the record led to that determination. On remand, SCOPS' decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

The Petitioner has demonstrated his qualification for EB-2 classification as a member of the professional holding an advanced degree. While the record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver, SCOPS did not adequately address the submitted evidence or properly apply *Dhanasar's* analytical framework. Therefore, for the reasons outlined above, we are remanding the petition.

On remand, SCOPS should review all evidence submitted to date, including the Petitioner's evidence and arguments on appeal, and issue a new RFE or notice of intent to deny (NOID) that complies with the applicable regulatory requirements and USCIS policy guidance. Upon receipt of the Petitioner's response, SCOPS shall issue a new decision.

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