U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37480163

Date: APR. 24, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a research and development project manager planning to work on "enhancement of concrete strength with wastewater byproducts," 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 record 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 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.

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;

[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).

- 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

SCOPS found that the Petitioner qualifies for the underlying EB-2 immigrant classification as an advanced degree professional.[2] The remaining issue is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, would be in the national interest. SCOPS found that the Petitioner established the endeavor's substantial merit, and was well-positioned to advance the endeavor, but did not establish either the endeavor's national importance or eligibility under *Dhanasar's* third prong.

Upon de novo review, we agree with SCOPS' finding that the Petitioner demonstrated the substantial merit of the proposed endeavor, but did not establish its national importance under *Dhanasar's* first prong. As the national importance issue is dispositive, we reserve our decision on whether the Petitioner can establish eligibility under *Dhanasar's* second or third prongs.

The Petitioner initially stated that his proposed endeavor "is to utilize machine learning algorithms to enhance the strength of concrete using wastewater byproducts." He noted that he had been "offered a full-time position at [redacted] in Minnesota as a Research & Development Project Manager" and intends to carry out the endeavor solely through his work at [redacted]. Further, the Petitioner stated that his employment at [redacted] "provides a practical environment to apply and test [his] research findings, bridging the gap between theoretical advancements and real-world applications."

Following initial review, SCOPS issued a Request for Evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence to attempt to establish eligibility for a national interest waiver.[3] Specifically, SCOPS sought additional evidence that the Petitioner's endeavor was of national importance and that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of labor certification.

After reviewing the Petitioner's RFE response, SCOPS determined that the Petitioner's proposed endeavor was not of national importance. SCOPS found that "it ha[d] not been established that the petitioner's endeavor stands to sufficiently extend beyond his proposed employer, [redacted], to impact the field or the nation more broadly at a level commensurate with national importance." Further, SCOPS stated that "it is not apparent how the petitioner's endeavor, to continue his career as a Research Development Project Manager, at [redacted], researching on enhancing concrete strength through the integration of wastewater byproducts, in the field of civil engineering, has national importance." SCOPS found that the Petitioner had "not established how a

[2] We agree. The Petitioner holds a master of engineering degree from the [redacted]. 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).

[3] In the RFE, SCOPS noted that the Petitioner had established eligibility for EB-2 classification as an advanced degree professional, that his proposed endeavor was of substantial merit, and that he was well-positioned to advance his endeavor.

single Research Development Project Manager will have national or global implications within the field of civil engineering, will have significant potential to employ U.S. workers, will broadly enhance societal welfare, or will impact a matter that the government has deemed as having national importance." SCOPS also found that the articles and support letters, while informative about the field of civil engineering in general, did not "establish that [the Petitioner's] particular endeavor within the field has national importance." SCOPS found that the Petitioner's endeavor is "mostly limited to the job position" at the construction company where the Petitioner is employed. Lastly, SCOPS found that the Petitioner had not demonstrated that the "economic implications of [the construction company's] operations would be attributable [to] his work…to an extent that [his] proposed work holds national importance."

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that, in assessing national importance, "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] 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.*

On appeal, the Petitioner contends his proposed endeavor is of national importance as its "current and 'potential prospective impact' extend well beyond the scope of his current work at [redacted], generating broad national benefit." Further, the Petitioner argues that "[h]is work to coordinate research-driven improvements in concrete mix designs, compressive-strength evaluation, and broader material optimization methods for construction of battery energy storage systems (BESS) facilities, plays a key role in supporting construction of top-priority US policy initiatives to transition from fossil fuels to renewable energy resources." He says that construction of the BESS facilities will lead to the employment of "thousands of construction workers" and "hundreds of full-time operator[s]." Additionally, the Petitioner contends his "use of state-of-the-art data analysis to identify solutions to difficult challenges in his field of endeavor" is nationally important.

Concerning potential prospective impact, we agree with SCOPS that the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor have national implications, a significant potential to employ U.S. workers, will broadly enhance societal welfare, or will impact a matter the government has deemed as having national importance. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner contends his endeavor will extend beyond his current work at [redacted] "generating broad national benefit." In support, the Petitioner states that he "developed predictive modeling to accurately and efficiently determine the compressive strength of concrete" prior to his current work at [redacted]. He "used Machine Learning algorithms which researchers use to solve questions by identifying patterns in large datasets." Further, the Petitioner states that he "demonstrated a higher level of analytical capacity by then using a more complex level of Machine Learning called Artificial Neural Networks (ANNs) which uses a network of interconnected nodes to process data and solve problems." In addition, the Petitioner "used Neuro electromagnetic field optimization to optimize the parameters of ANN." However, the Petitioner's experience and prior record of success go to *Dhanasar's* second prong which shifts the focus from the proposed endeavor

to the individual. *Matter of Dhanasar*, 26 I&N Dec. at 890. It is unclear from his highly technical references how they impact the Petitioner's proposed endeavor or show how it will have broader implications such as to reach national importance.

Likewise, the Petitioner states that "the abundant citations" to one of his papers demonstrates that his proposed endeavor has broader implications. He contends his "use of state-of-the-art data analysis to identify solutions to difficult challenges in his field of endeavor" is nationally important. We disagree. While the Petitioner's paper citation history is commendable, he has not shown how the paper will result in broader implications for his endeavor. Rather, the Petitioner's paper's citation history is a consideration under *Dhanasar's* second prong. We look to a person's education, skills, knowledge, and record of success to determine whether they are well-positioned. *See generally* 6 USCIS Policy Manual F.5(D)(1), https://www/uscis.gov/policy-manual. Here, we conclude that the Petitioner's citation history does not demonstrate his endeavor's national importance.

The Petitioner contends that his "work to ensure the enduring concrete quality and safety of [critical energy] facilities generates a 'Greater Good' across America" which has "broader implications." Essentially, the Petitioner's argument is that his current and future employer, [redacted], will build critical energy facilities relying on the Petitioner "to verify that the concretes and other structural components utilized at energy storage sites meet the exacting demands of mechanical loading, cost efficiency, and sustainability." The Petitioner contends that his work "on [redacted] energy projects is his 'job' but his contributions more broadly enhance the well-being of American society and the infrastructure it depends on to generate economic growth and prosperity."

The Petitioner contends that his endeavor will extend beyond his employer's operations to more broadly effect public welfare. According to the Petitioner, his endeavor will "[c]ontribute to building the many actual foundations of America's renewable energy power and storage facilities…which will harvest and store sufficient solar energy to power millions of homes across the country for decades to come." He argues that "his contributions more broadly advance the well-being of American society." Yet, SCOPS addressed this argument and determined that the Petitioner had not established how a single Research and Development Project Manager will have national or global implications in the field of civil engineering, will have the potential to employ U.S. workers, will broadly enhance societal welfare, or will impact a matter that the government has deemed has national importance. Benefits to a specific employer alone, even an employer with a national footprint, are not sufficiently relevant to the question of whether a petitioner's endeavor is of national importance.[4]

Further, the Petitioner contends his endeavor will result in the "employ[ment] of thousands of construction workers required to build [Battery Energy Storage Systems (BESS)] in several states and then hundreds of full-time system operator professionals to manage" them. He contends this expected job creation demonstrates his endeavor is of national importance. SCOPS analyzed this contention and determined that the Petitioner had not demonstrated that his endeavor has a significant potential to employ U.S. workers. We agree. The Petitioner's endeavor is to remain working for his current employer. The record does not contain any individual business plan that would suggest the Petitioner

[4] *See generally* USCIS Policy Alert PA-2025-03, *Second Preference Eligibility for National Interest Waiver Petitions* 13 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (providing factors to consider in analyzing national importance).

himself will hire workers. Additionally, even if the Petitioner identified the total number of [redacted] employees, it would be difficult to determine how many company employees would be as a result of any initiative from the Petitioner's work. Therefore, nothing in the record supports how the Petitioner's endeavor will impact the creation of jobs for U.S. workers or "other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner makes broad assertions concerning the generation of "thousands of jobs across the country," but provides no supporting evidence to show how these jobs will materialize. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1988) ("statements in brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

To show the national importance of his endeavor, the Petitioner also asserts that he is an "exceptionally talented civil engineer" and that "[h]is technical knowledge required to enhance the reliability, cost-effectiveness, and substantiality of large-scale infrastructure projects exceeds the standard profile of an engineer without highly specialized experience." However, as explained above, a petitioner's education, experience, and record of success go to *Dhanasar's* second prong, whether a petitioner is well-positioned to advance his endeavor. While the Petitioner may have "special qualifications and experience," those attributes do not help demonstrate his endeavor's national importance.

On appeal, the Petitioner submits new letters in support. In a letter from B-R-, a project executive at [redacted], the author states that the Petitioner is "an exceptionally talented engineer who has significantly advanced the field of civil engineering through both his prior research and his current contributions." Further, the author states [redacted] is a "leader in the construction of renewable energy, power delivery, and energy storage." He emphasizes that the Petitioner's "background in construction and his research, particularly in concrete strength and related engineering skills, has proven exceptionally valuable." The author states that the Petitioner's "knowledge and experience of concrete strength—which includes testing methodologies and quality assurance—contributes significantly to the resilience and longevity of these essential energy installations." Additionally, the author contends that the Petitioner's assignment to a battery energy storage facility project in Texas "represents a transformative milestone for the local region by creating jobs and support sustainability" and "also serving as a model for broader renewable infrastructure implementation across the United States."

As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive of eligibility. *Id.*

As we stated above, a petitioner's experience and prior record of success go to *Dhanasar's* second prong which shifts the focus from the proposed endeavor to the individual. *Matter of Dhanasar*, 26 I&N Dec. at 890. Much of the letter from B-R- focuses on the Petitioner's experience, skills, and knowledge, which are considerations under *Dhanasar's* second prong. Regarding the author's assertion that the project that the Petitioner is currently assigned to will produce jobs, no corroborating evidence is in the record to support the claim. Additionally, even if evidence of job creation had been

submitted, the Petitioner would have had to demonstrate that the job creation was specifically linked to his endeavor, rather than just general company needs.

Likewise, the letter from K-Q-W-, an associate teaching professor in civil and environmental engineering and earth sciences at the [redacted], is insufficient to demonstrate the endeavor's national importance. The author offers his "strongest support for [the Petitioner] and his exploration of machine learning-driven, wastewater byproduct-based concrete." He argues that even if "such research may initially be conducted within the scope of a private company" that he is "confident that the insights, data, and techniques [the Petitioner] develops will spread far beyond a single organization." We acknowledge that the author provides viable potential "pathways" for the Petitioner's "findings" to spread beyond [redacted] such as through publications, conferences, industry standards, and collaborative projects. Yet, the letter does not address if even the proposed pathways of dissemination are feasible. The author points to no evidence that those pathways are permissible under the Petitioner's conditions of employment at [redacted], or whether any of this information or techniques would be proprietary.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. While we acknowledge that the field of civil engineering is important, we conclude that the letter from K-Q-W- does not sufficiently detail how the Petitioner's endeavor will reach a level commensurate with national importance.

The Petitioner has not established the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning his eligibility under *Dhanasar's* third prong. *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).

## III. CONCLUSION

As the Petitioner has not met the first prong of the *Dhanasar* analytical framework, we conclude he is not eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.