U.S. Citizenship and Immigration Services

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

In Re: 43786082

Date: AUG. 17, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner 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).

USCIS denied the petition, concluding 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

The Petitioner stated that his proposed endeavor is "the continued research, refinement, and U.S.-based implementation of an AI-enabled preventative healthcare platform known as [redacted]' designed to

[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).

support value-based care through early risk identification, chronic disease prevention, and patient-centered care delivery."

In denying the petition, Service Center Operations (SCOPS) found that while the Petitioner had established the substantial merit of his proposed endeavor, he had not established that his proposed endeavor has national importance, that he is well positioned to advance it, and that, on balance, waiving the job offer requirement would be beneficial to the United States.

On appeal, the Petitioner contends that SCOPS misapplied the *Dhanasar* legal framework and did not properly evaluate the evidence. Upon review, we agree that this matter warrants a remand for the reasons discussed below.

As noted by the Petitioner on appeal, SCOPS' decision appears to misapply the standards set forth in *Matter of Dhanasar* and require evidence not required to show eligibility. For instance, with regard to the first prong, SCOPS' decision cited *Dhanasar* and stated that "[t]o satisfy this prong, the beneficiary would have needed evidence of adoption across multiple states at scale, federal agency endorsement, funding, or integration into CMS or HHS initiatives, nationwide implementation contracts, data modeling showing projected national healthcare cost impact, and evidence that the platform materially affects healthcare delivery beyond specific private institutions." While these types of evidence may be helpful in determining whether an endeavor rises to the level of national importance, they are not required to establish eligibility.[2]

Additionally, the decision stated that "[t]he record does not contain binding nationwide implementation agreements, federal agency endorsement, multi-state health system adoption beyond pilot scale, or quantified national economic modeling demonstrating macro-level healthcare savings." It continued that "[a]ssertions that the model could be deployed across [Federally Qualified Health Centers (FQHCs)] remain speculative without documentation of systemic adoption." However, as raised by the Petitioner, under *Dhanasar*, in determining whether a proposed endeavor has national importance, we consider its *potential prospective* impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. Therefore, while such evidence may be useful in demonstrating an endeavor's national importance, lack of such evidence does not render the potential deployment of the model across various healthcare institutions "speculative without documentation of systemic adoption."

Similarly, with regard to the second prong, SCOPS' decision again appears to suggest that certain pieces of evidence are required in order to meet this prong. For example, the decision states that "[t]o satisfy this prong, the beneficiary would have needed to provide federal or multi-state grant funding, evidence of proprietary patents with demonstrated national adoption, peer-reviewed publications influencing clinical guidelines, binding long-term contracts naming the beneficiary personally, and independent expert letters explaining why the beneficiary's expertise cannot be readily replaced." The decision also inaccurately stated that "AAO precedent requires more than general letters of support; it requires evidence of sustained reliance or funding."[3] Again, while evidence such as funding, patents,

[2] *See generally* 6 *USCIS Policy Manual* F.5(D)(3), https://www.uscis.gov/policy-manual (discussing the first prong).

[3] *But see generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(3) ("Letters may be persuasive when they are from experts in the person's field who have first-hand knowledge of the person's achievements, describe those achievements, provide specific examples of how the person is well positioned to advance the person's endeavor, and are supported by other independent evidence.")

publications, or contracts may be helpful to show the Petitioner satisfies this prong, it is not required to establish eligibility. In satisfying their burden of proof, a petitioner may choose from a variety of evidence to demonstrate they meet the eligibility requirements.

With regard to the third prong, SCOPS' decision also appears to misstate the legal standard and indicates that "[t]o satisfy this prong, the beneficiary would have needed to show clear national harm if [a] labor certification were required, and benefits to the United States that substantially outweigh the protections afforded by the labor certification process." However, in *Dhanasar*, when discussing the new legal framework for adjudicating national interest waiver petitions, we noted that "unlike the third prong of [*Matter of New York State Dep't of Transp.* ("*NYSDOT*"), 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998)], [this prong] does not require a showing of harm to the national interest or a comparison against U.S. workers in the petitioner's field." *Matter of Dhanasar*, 26 I&N Dec. at 891. Rather, under the new framework of *Dhanasar*, 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. *Id.* at 890-91. In performing this analysis, *Dhanasar* stated that USCIS may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id. Dhanasar* further explained that, in each case, the factor(s) considered must, taken together, establish 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. *Id.* at 891. *Dhanasar* does not require a showing of "clear national harm if [a] labor certification were required."

For the reasons discussed above, we conclude that a remand is appropriate in this case. While the evidence of record may or may not ultimately be sufficient to demonstrate the Petitioner's eligibility for a national interest waiver, SCOPS should re-adjudicate the petition using the correct legal framework under *Matter of Dhanasar*. On remand, SCOPS should review the record and consider whether the Petitioner is eligible for a national interest waiver under each of the three *Dhanasar* prongs adhering to the *Dhanasar* framework. If SCOPS finds that the Petitioner's evidence does not meet a specific eligibility requirement, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. If required, SCOPS may request any additional evidence considered pertinent to their determination prior to issuing a new decision. In remanding, we express no opinion as to the ultimate resolution of this case.

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