U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39147714

Date: AUG. 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a postdoctoral medical researcher, 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).

SCOPS denied the petition. SCOPS determined that the Petitioner qualifies as a member of the professions holding an advanced degree. However, SCOPS concluded that the record does not establish that a waiver of the job offer requirement, and thus of 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). 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 the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner described the proposed endeavor as a "plan to continue developing advanced machine learning and statistical methods for classifying and diagnosing disease, extracting insights from unstructured data such as images, and evaluating treatment effectiveness." The Petitioner elaborated that her postdoctoral medical research endeavor will "improve early disease detection, enhance precision medicine, and address critical public health challenges in the United States, such as reducing healthcare disparities and accelerating treatment innovation." She further noted that her endeavor "aligns with national priorities, as highlighted by the National Institutes of Health (NIH) and the National Artificial Intelligence Initiative Act of 2020, which emphasize the transformative efficiency of AI in healthcare to improve outcomes and lower costs."

In addition to determining that the Petitioner qualifies for second preference classification as a member of the professions holding an advanced degree, SCOPS also concluded that the proposed endeavor has both substantial merit and national importance, as required by the first *Dhanasar* prong. We agree with these determinations. However, SCOPS concluded that the record does not establish that the Petitioner is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong; and 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, as contemplated by the third *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

Although we conclude that the record satisfies the first *Dhanasar* prong, for the reasons discussed below, the record does not establish that the Petitioner is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong. *See id.* Because the record does not satisfy the second *Dhanasar* prong, which is dispositive, we reserve our opinion regarding whether it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification, as contemplated by the third *Dhanasar* prong. *See id.*; *see also 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).

The second *Dhanasar* prong focuses on the individual pursuing the proposed endeavor. To determine whether an individual is well-positioned to advance the proposed endeavor, we consider factors including, but not limited to: 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. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

The record establishes that the [redacted] awarded the Petitioner a Ph.D. in Public Health, specializing in biostatistics, in 2022. Therefore, the record establishes that the Petitioner is a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree" as "any United States academic or

professional degree or foreign equivalent degree above that of a baccalaureate"). We consider the Petitioner's Ph.D. in a STEM field tied to her proposed endeavor to be an especially positive factor for establishing the second *Dhanasar* prong. *See generally* 6 USCIS Policy Manual F.5(D)(4), https://www.uscis.gov/policymanual. However, when considered with other evidence in the record, the Petitioner has not shown that she is well-positioned to advance her proposed endeavor as contemplated by *Dhanasar*.

The record contains information regarding prior research to which the Petitioner has contributed, including publication and citation information. The Petitioner also submitted personal statements describing her plan for future activities, and letters of recommendation from other medical researchers.

SCOPS acknowledged the information in the record; however, SCOPS observed that the record indicates the Petitioner's prior research activities were collaborative and that, unlike the petitioner in *Dhanasar*, the Petitioner is not credited as the primary author of most research projects to which she contributed. SCOPS also noted that citation information the Petitioner submitted in response to a request for evidence (RFE) that presents a set of facts that did not exist at the time of filing cannot establish eligibility, citing 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). SCOPS also noted that the record provides limited information regarding her research funding. Based on those and similar issues, SCOPS concluded that the record does not establish the Petitioner is well-positioned to advance the proposed endeavor.

On appeal, the Petitioner reasserts that her education, skills, and knowledge demonstrate she is well-positioned to advance the proposed endeavor. She also asserts on appeal that her personal statement submitted in response to the RFE is a model or plan for future activities that establishes she is well-positioned to advance the proposed endeavor. The Petitioner states that "her work has resulted in 27 peer-reviewed journal articles (1 of them first-authored) and 6 conference abstracts (3 of them first-authored) published in prestigious venues." Relatedly, she discusses her "updated Google Scholar citation record" that she submitted in response to the RFE. The Petitioner states that the citations that the articles to which she contributed received after the petition filing date indicate progress toward achieving her proposed endeavor. She further asserts that the entities that published the prior articles to which she contributed indicate interest of relevant entities.

We acknowledge that the Petitioner's academic and research history indicates that she has education, skills, and knowledge relevant to the proposed endeavor. However, the Petitioner has not established that she is well-positioned to advance the proposed endeavor for several reasons.

First, the record does not establish how the Petitioner's proposed endeavor would be funded. In *Dhanasar*, we highlighted that "the sustained interest of and funding from government entities . . . position [that petitioner] well to continue to advance his proposed endeavor of hypersonic technology research." *See Matter of Dhanasar*, 26 I&N Dec. at 892-93. In contrast, in this case the record does not establish funding from any particular source for the prospective research the Petitioner proposes to conduct as her proposed endeavor. In response to the Director's RFE, the Petitioner submitted a copy of a grant the NIH awarded to [redacted] dated September 17, 2024. However, the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in March 2024. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R.

§ 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 176. The date on which the NIH awarded the grant is material to the second *Dhanasar* prong because it directly addresses both progress towards achieving the proposed endeavor and the interest of potential customers, users, investors, or other relevant entities or individuals. Because the 2024 NIH grant is dated after the Form I-140 filing date, it presents a new set of material facts that did not exist at the time of filing that cannot—and does not—establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Even if the NIH funding grant could establish eligibility, which it does not, the grant identifies [redacted] Ph.D., as the "project director or principal investigator," and [redacted] Ph.D., as the "authorized official." It does not identify the Petitioner as the recipient of the grant. We acknowledge that the record contains a two-page excerpt from an unidentified document, numbered "Page 60" and "Page 61," that indicates the Petitioner "will serve as a biostatistician and data analytics expert for all 5 years of [an unidentified] project," along with four apparently senior researchers listed above her, three individuals listed below her as "other personnel," and an unidentified postdoctoral radiologist. However, the excerpted document does not establish the connection between the unspecified project it references and the NIH grant. The remainder of the record does not establish that the NIH—or any other individual or entity—would fund the Petitioner's proposed endeavor. The lack of admissible and probative funding information in the record provides little support for determining the proposed endeavor has the level of interest of potential customers, users, investors, or other relevant entities or individuals that would make the Petitioner well-positioned to advance the proposed endeavor.

We note that, on appeal, the Petitioner describes a letter from [redacted] in the record as a "testimonial confirming [the Petitioner's] key role in obtaining prestigious funding support." However, contrary to the Petitioner's characterization, [redacted] letter primarily provides generalized information regarding Parkinson's disease and nanoparticle research. The extent of [redacted] remarks regarding the Petitioner's role in obtaining funding is the conclusory, unsubstantiated statement, "That [the Petitioner's] research contribution has received a grant from the NIH indicates that she has an exceptionally strong record of executing innovative biostatistics research." It does not provide information regarding a role the Petitioner performed and that role's causal nexus to any particular project obtaining funding.

Second, although the Petitioner submitted personal statements that describe her prior research and indicate that she intends to continue conducting similar research, her personal statements provide few details regarding how she plans to accomplish her general objectives. For example, although the Petitioner's personal statements generally describe phases of research, they do not elaborate on when the Petitioner anticipates conducting any particular phase, the duration those phases would last, when the Petitioner would prepare results for publication, and other details about the proposed research that may form the type of model or plan for future activities contemplated by the second *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Without more, the Petitioner's generalized intention to contribute to research similar to research that she has already conducted does not present a strong indication of a model or plan for future activities.

Third, as SCOPS addressed, the record provides insufficient information regarding the Petitioner's record of success in related or similar efforts. The Petitioner provides information regarding 27 research articles she authored or co-authored, published between 2016 and 2023; however, the record does not establish the significance of authoring or co-authoring 27 publications in an eight-year period, as compared to other medical researchers. Additionally, as SCOPS observed, the Petitioner's role in many of those research articles appears attenuated, as she is listed as the second, third (seven times), fourth (three times), fifth (four times), sixth (six times), and seventh (five times) credited researcher for 26 of them. Similarly, the record establishes the Petitioner was the first credited researcher for only three of six conference presentations.

The record contains citation information for the Petitioner's articles, which she asserts is from Google Scholar; however, the three-page, unnumbered document itself does not indicate what its source is, which casts doubt on whether it is what the Petitioner purports it to be. *See, e.g., Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Beyond the issue of whether the citation information is from Google Scholar, it provides little support for the conclusion that the Petitioner's citation rate positions her well to advance her proposed endeavor. For example, according to this document, the only article for which the Petitioner is the first credited author appears to have received no citations between 2023 and the time the Petitioner filed the Form I-140 in 2024, like many of the articles to which she contributed. Most of the Petitioner's citations are for articles for which she is not among the first five credited authors. The record does not clarify whether some or all of the citations are self-citations or citations by the co-authors of the Petitioner's articles, rather than from unaffiliated researchers not already familiar with the articles' findings. Moreover, the record does not contextualize the citations the Petitioner received, to indicate whether citing researchers deem those articles favorably or otherwise. Pursuant to the USCIS Policy Manual, documentation demonstrating a strong citation history of a petitioner's work or excerpts of published articles showing positive discourse around, or adoption of, the petitioner's work are types of evidence that may demonstrate that a petitioner is well-positioned to advance a proposed endeavor. *See generally* 6 USCIS Policy Manual F.5(D)(3), https://www.uscis.gov/policymanual. Here, the Petitioner has not demonstrated that her citation record or discourse around or adoption of her published works reflect a record of success sufficient to meet *Dhanasar*'s second prong.

We note, again, that information that presents a new set of material facts that did not exist at the time of filing cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Therefore, we need not address information regarding citations the articles to which the Petitioner contributed received after the Form I-140 filing date, which the Petitioner submitted in response to the RFE.

Finally, we acknowledge that the Petitioner submitted letters of recommendation from other medical researchers. However, the letters of recommendation generally indicate that the Petitioner has performed a support role in much of her research projects and activities. Relatedly, as noted above, the several articles for which the Petitioner was a credited researcher—including the only article for which she was the first credited researcher—received few or no citations at the time she filed the Form I-140, which does not demonstrate much success in similar efforts, or interest from other relevant individuals. *See Matter of Dhanasar*, 26 I&N Dec. at 890. Although the letters of recommendation support the conclusion that the Petitioner has assisted—and is likely to continue assisting—other

researchers in their research projects, they do not support the conclusion that the Petitioner is well-positioned to advance the proposed endeavor.

Considering the totality of circumstances, the Petitioner has not demonstrated by a preponderance of the evidence that she is well-positioned to advance her proposed endeavor; thus, she has not established that she satisfies the second prong of the *Dhanasar* framework.

III. CONCLUSION

As the record does not establish the Petitioner is well-positioned to advance the proposed endeavor, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

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.