U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40567432

Date: DEC. 08, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a software developer and entrepreneur in the information technology (IT) industry, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

Service Center Operations (SCOPS) denied the petition, concluding although the Petitioner qualified as an advanced degree professional, he 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.

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 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;
- 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

The Petitioner's proposed endeavor is to establish a software automation and efficiency solutions services firm in [redacted], Florida. The Petitioner explains that his company will "provide software automation and IT solutions aimed at improving workflows, reducing labor costs, and streamlining operations across multiple sectors, including healthcare, manufacturing, and logistics." He also explains that he will assist "companies modernize their operations through advanced DevOps and cybersecurity services."

A. EB-2 Classification

The Petitioner submitted his U.S. bachelor's degree in software engineering, along with an employment letter showing five years of experience in the specialty. SCOPS determined the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

B. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* SCOPS determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, SCOPS concluded the Petitioner did not establish that his proposed endeavor has national importance.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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.* 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.* at 890.

[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 appeal, the Petitioner submits a brief and generally asserts that SCOPS imposed a stricter standard of proof than preponderance of the evidence and erroneously applied the law. However, the Petitioner does not provide examples or details to support these assertions. Based on our de novo review, we conclude SCOPS properly determined that the Petitioner had not established by a preponderance of the evidence the national importance of his proposed endeavor.

The Petitioner contends SCOPS did not give due regard to his resume, evidence of his work in the field, and letters of recommendation. However, these documents describe the Petitioner's knowledge, skills, and abilities, which relate to the second prong of the *Dhanasar* framework and "shifts the focus from the proposed endeavor to the foreign national." *Id.* In our analysis of prong one, our focus is on the specific endeavor that the individual proposes to undertake. *Id.* at 889. The referenced evidence does not address the Petitioner's proposed endeavor nor explain how it is nationally important.

The Petitioner also claims SCOPS did not properly analyze the submitted industry reports and articles which discuss the importance of the IT industry and its impact on the economy. In addition, he highlights that the benefits of his endeavor align with national priorities, including the U.S. Department of Defense's "Software Fast Track" initiative. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Id.* Instead, when determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* Thus, while we acknowledge that the IT industry is important, this fact is insufficient to establish the national importance of his proposed endeavor.

In addition, the Petitioner mentions that there is a shortage of business technology professionals in the United States, but the Petitioner does not provide any evidence that there is such a shortage. Nevertheless, the national shortage of business technology professionals is not, in and of itself, sufficient to establish the national importance of the Petitioner's endeavor. Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process.

The Petitioner also asserts SCOPS did not fully consider his business plan which shows that he will establish his proposed endeavor within a designated Small Business Administration (SBA) Historically Underutilized Business Zone (HUBZone) in [redacted], Florida and subsequently expanding to [redacted] and [redacted], Florida. However, we are not persuaded by the Petitioner's intention to operate his proposed endeavor within a HUBZone since the Petitioner has not adequately established what parameters the SBA considers when it establishes HUBZones. We therefore cannot evaluate whether these SBA-identified underutilized business zones are akin to the types of economically depressed areas within which creating employment could be a potential positive economic effect.[2] Thus, the Petitioner has not provided evidence that the area where his company

[2] The HUBZone program's goal is to promote business growth in underutilized business zones by awarding 3% of federal contract dollars to HUBZone-certified companies. That certification makes a business eligible to compete for certain federal contracts in the "set-aside" category. There are several required qualifications to participate in the program, but the most dispositive one for our analysis today is that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. While it is unknown and the record is silent as to

intends to operate is economically depressed, that it would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or related tax revenue. While his intentions are meritorious, the Petitioner has not provided corroborating evidence to support his claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 376.

Moreover, the job creation and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized and therefore do not sufficiently corroborate the national importance of her endeavor. Even if the Petitioner had established a sufficient basis for these projections, they still do not establish the national importance of the proposed endeavor. While the projected income statement indicates that the Petitioner's software automation and efficiency solution services business has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar* to establish its national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In *Dhanasar*, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Likewise, the Petitioner has not established how providing his software automation and efficiency solution services stands to sufficiently extend beyond his clients to impact the field more broadly at a level commensurate with national importance. We acknowledge the Petitioner's assertions that is proposed endeavor will address "urgent technological and economic needs" and that his business model is "scalable and transferable, with the capacity to influence industry standards and practices nationwide." The Petitioner, however, has not provided evidence demonstrating that his proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the asserted potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

Accordingly, we agree with SCOPS that the record does not demonstrate that the Petitioner's proposed endeavor will have broader impacts rising to the level of national importance.

C. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are 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

whether any federal programs exist in the "set-aside" category for endeavors like the one the Petitioner proposes, it appears as though the Petitioner's proposed endeavor would be wholly owned and controlled by the Petitioner and that the Petitioner is not a U.S. citizen, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. We therefore question whether the Petitioner would even be eligible to participate in the HUBZone program.

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.* at 890.

SCOPS determined that the Petitioner is well-positioned to advance his proposed endeavor but did not include an analysis to support its conclusion. Upon de novo review, we disagree with SCOPS and withdraw SCOPS' conclusion. While the Petitioner has credentials and experience as a software developer, we conclude that the record does not demonstrate that he is well-positioned to advance his endeavor as a software developer and entrepreneur owning and operating a software automation and efficiency solution services firm.

The *Dhanasar* decision spelled out several factors which can be considered in determining whether a petitioner is well-positioned to advance their proposed endeavor, including several which are pertinent to entrepreneurial endeavors. *Id.* These include a record of success in similar efforts, any progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals. In this case, the record lacks evidence to support any of these factors.

The Petitioner submitted his resume and recommendation letters from his current and former employers, and colleagues. The letters provide general descriptions of the Petitioner's job duties and praise the Petitioner's knowledge and skills. However, the letters do not further elaborate on or sufficiently explain how the Petitioner's work has been utilized in the field or otherwise constitutes a record of success. Moreover, the lack of specificity in the letters does not show how his work has affected the field or industry demonstrating a history of accomplishment, well positioning himself to advance his proposed endeavor.

In addition, the record lacks documentation of any progress towards achieving the proposed endeavor, which might include the establishment of the business as a legal entity, registration of the business, securing any necessary funding, renting or purchasing physical space for the business, and the hiring of employees and contractors. Further, there is no indication in the record that the Petitioner has successfully gathered interest from potential investors or customers. While "we do not ... require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed," here the record includes more information about his achievements as a software developer than about the prospects of his proposed business. *Id.* Accordingly, we disagree with SCOPS and conclude that the Petitioner has not established that he meets the second prong of the *Dhanasar* framework.

III. CONCLUSION

Because the Petitioner has not established eligibility under the first and second prongs of the *Dhanasar* analysis, we need not address his eligibility under the third prong, and we hereby reserve it. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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). The burden of proof is on the Petitioner to establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for 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 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.