U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40528125

Date: DEC. 9, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is an engineering graduate research assistant who intends to work as a biomedical engineer. He 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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:

[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 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

SCOPS found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] Therefore, the sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a research assistant at the [redacted][3] He was also pursuing a Master of Business Administration degree at the same university. The Petitioner stated that his proposed endeavor is to conduct research where he will "combine advanced engineering principles with practical agricultural applications" with the goal of "developing innovative pathogen detection systems and cutting-edge embryo health monitoring technologies" that will advance "national biosecurity and agricultural productivity." He added that he plans to create portable "point-of-care devices" that will enable early detection and prevention of the spread of disease in agriculture and livestock and reduce reliance on broad-spectrum antibiotics.

As discussed below, we conclude the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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, and we agree, that the Petitioner's proposed endeavor has substantial merit.

However, we disagree with and will therefore withdraw SCOPS' determination that the Petitioner did not establish the national importance of his proposed endeavor under *Dhanasar's* first prong. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* As evidence that his proposed research has substantial merit and national importance, the Petitioner presented information about the demand for livestock and livestock's critical role in agriculture. He also provided letters of support discussing how his undertaking helps contribute to advancements in pathogen detection technology which improves national biosecurity by

[2] The record shows that the Petitioner received a Master of Science degree in Electrical Engineering from the [redacted] in 2024.

[3] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, to determine whether the proposed endeavor meets the requirements of the *Dhanasar* framework, we will consider information about the Petitioner's research position, as it conveys relevant information about the capacity in which he intends to work.

ensuring a safer food supply. Additionally, the record indicates that the Petitioner's proposed research stands to offer broader implications in the field of biomedical engineering, as he plans to publish the results in scientific journals and disseminate them to others in the field through conferences.

As the Petitioner has demonstrated both the substantial merit and national importance of his proposed research, he has established that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. 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 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.*

The record includes documentation of the Petitioner's curriculum vitae, master's degree, Google Scholar profile, letters of support discussing his graduate research, a job offer letter, and a project management certification.

On appeal, the Petitioner contends that SCOPS did not fully evaluate previously submitted evidence, which included a "provisional patent for a [redacted]" and several letters of recommendation, including one from "an expert in microfluidics and in vitro fertilization [] technology" and one from "the principal investigator" of various projects the Petitioner had worked on. In addition, the Petitioner asserts that his credentials and level of education make him well position to advance his endeavor, pointing out that he is currently pursuing a second master's degree and "actively contributing to novel research projects." For the reasons discussed below, the record supports SCOPS' determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor under the second prong of the *Dhanasar* analytical framework.

First, regarding the Petitioner's reference to a "provisional patent," the Petitioner provided a document that contains a confirmation number and filing receipt and states the following, in pertinent part: "Receipt is acknowledged of this provisional patent application." In other words, the document does not appear to be a "provisional patent" but rather a confirmation number issued by the U.S. Patent and Trademark's Office acknowledging their receipt of an application for a provisional patent.[4] Moreover, the filing date of '[redacted]' establishes that the patent application had not been filed as of January 10, 2025, which is the filing date of this petition. The affected party has the burden of proof to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the

[4] In the denial, SCOPS stated that "[t]he petitioner contributed to the research that led to a patent." As noted, the record contains evidence that the Petitioner was named as an inventor in a patent application that was filed several months after the filing of this petition. The record does not contain evidence that a patent was granted.

beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

Further, the Petitioner points to a letter from Dr. A-R-, who discussed the Petitioner's role as a "leading contributor" in the development and patenting of the product [redacted] which Dr. A-R- described as "a lightweight, energy-efficient personal cooling system designed to protect industrial workers in hazardous environments." However, the Petitioner did not state how this patented invention is relevant to his proposed endeavor or explain how his contributions to the invention of [redacted] further his position to advance the proposed endeavor. And although Dr. A-R- praised the Petitioner as having been "indispensable in the conception and execution" of a project that was funded by the U.S. Department of Agriculture, he did not offer specific examples of how the Petitioner's work has affected his field, or how it otherwise shows success or progress at a level that renders him well positioned to advance his proposed endeavor.

The Petitioner also highlights a letter of recommendation from Dr. V-P-, Associate Professor of Electronics and Biomedical Engineering at the [redacted] pointing out that she attended an engineering conference in 2024 where the Petitioner presented his findings concerning his "innovative work on bovine embryo handling using [redacted]." While Dr. V-P- acknowledged that the Petitioner's "approach has the potential to address a significant issue in IVF" and "could be adapted to other cell-based studies requiring precise health assessments," she did not elaborate on the extent to which the Petitioner's specific findings have been utilized in the industry. And while she also highlighted the Petitioner's "membership in esteemed organizations," the Petitioner has not explained how such membership renders him well positioned to advance his proposed endeavor.

Next, addressing the issue of his level of education and credentials, the Petitioner underscores his current pursuit of a second master's degree "while also actively contributing to novel research projects on improving molecular field tests for detecting pathogens in agricultural products." First, as noted earlier, the Petitioner assumes the burden of establishing eligibility for the requested benefit *at the time of filing*. *Id.* Here, it is undisputed that the Petitioner had not earned a second master's degree at the time of filing. It is unclear how his efforts to get the second degree demonstrate that the Petitioner is well positioned to advance his endeavor. And although the Petitioner had earned an advanced degree in a STEM field, which is an "especially positive factor," it is not a sufficient basis to determine that he is well positioned to advance his proposed endeavor. *See generally* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov (providing, as guidance, that we look to a variety of factors and education is merely one among many that may contribute to whether an individual is well-positioned to advance their proposed endeavor).

Also, regarding the Petitioner's claim that he made significant contributions "to multiple novel and successful government-funded projects," we point to *Dhanasar*, where the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than one of his professors) was mainly responsible for obtaining funding for their research projects.

On appeal, the Petitioner highlights his "successful contributions and trajectory as a researcher in multiple research institutions" and points to a previously submitted support letter from Dr. D-J-, who hired the Petitioner as a graduate research assistant to work on biosecurity-related projects due to the Petitioner's "engineering expertise." However, while Dr. D-J- praised the Petitioner's "diverse range of skills including competencies with hands-on microbiological tasks" and stated that the Petitioner contributed "to the design and testing of a low-cost disposable microfluidic device," he did not discuss the impact, if any, or the application of the Petitioner's contributions to the field of biomedical engineering. And while the Petitioner also highlights evidence pertaining to his experience in the research and development sector of electrical engineering, we note that the focus of his proposed endeavor is to conduct research that will advance the development of pathogen detection systems thereby protecting the U.S. food supply and public health. It is unclear how the Petitioner's prior experience in the research and development sector of electrical engineering will render him well positioned to advance his proposed endeavor.

Further, despite submitting his Google Scholar profile, which shows that he published three papers in 2024, the Petitioner has not provided evidence that his work has been cited by others. Nor has he otherwise demonstrated that his research findings constitute a record of success or progress rendering him well positioned to advance his proposed endeavor. Thus, while we acknowledge that the Petitioner has conducted, published, and presented research, he has not demonstrated a record of success with respect to his research. And while we also recognize that research must add information to the pool of knowledge in some way to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar*, such as the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties, to determine whether the evidence supports the Petitioner's finding that he is well positioned to advance his endeavor. *See id.* at 890. Here, the Petitioner has not sufficiently demonstrated that his graduate work constitutes a record of success or progress in his area of research rendering him well positioned to advance his proposed endeavor. Because the Petitioner has not demonstrated that he is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

III. CONCLUSION

Because the documentation in the record does not establish that the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third prong outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

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.