U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40554284

Date: DEC. 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an electrical products manufacturer, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary, a software engineer, 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, concluding that the record did not establish that a waiver of the job offer requirement is 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification (their own in the case of a self-petition; the beneficiary's in the case of a job offer), as either 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, the petitioner must then establish eligibility for 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. *Matter of 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

SCOPS determined that the Beneficiary qualifies for the EB-2 classification as an advanced degree professional, based upon obtaining the foreign equivalent of a bachelor's degree in computer science followed by at least five years of progressive experience in the specialty. However, SCOPS denied the petition, concluding that the Petitioner did not establish eligibility under any of the three prongs of the *Dhanasar* analytical framework. Based on our de novo review of the record, we agree with SCOPS that the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Matter of Dhanasar*. Specifically, we conclude that the Petitioner has not sufficiently demonstrated the national importance of the proposed endeavor as required by the first *Dhanasar* prong.

The Petitioner's initial filing did not clearly define a specific proposed endeavor. Instead, the Petitioner described the Beneficiary's job with the Petitioner and claimed that his "contributions to the field are of substantial merit and national importance" and that he is well-positioned to "continue advancing his field." SCOPS issued a request for evidence (RFE), advising the Petitioner that "an occupation and the general work performed in that occupation (in your case, software engineering for [the Petitioner]) does not constitute an endeavor," and requesting, among other things, that the Petitioner provide further details about the specific proposed endeavor.

In response to the RFE, the Petitioner stated that the Beneficiary's proposed endeavor is "translating traditional hardware into software for industrial automation tools dedicated to [a]dvanced [m]anufacturing for critical sectors." The Petitioner discussed two of the specific products on which the Beneficiary is working related to plant asset management in manufacturing. The Petitioner claims that these products, which are used by major U.S. manufacturers, are crucial for maintaining efficiency and safety in manufacturing plants, and that the endeavor therefore supports the federal government's goal of promoting U.S. manufacturing.

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

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that SCOPS mischaracterized the proposed endeavor and either disregarded or did not appropriate weight to the evidence in the record. The Petitioner objects to SCOPS' conclusion that the Petitioner primarily described the goals and activities of the company, rather than establishing that the Beneficiary's specific endeavor is nationally important. Additionally, the Petitioner cites to a prior non-precedent decision of the AAO in support of its claim that an employee's work within a company can rise to the

level of national importance. Finally, the Petitioner claims that SCOPS required too high of an evidentiary burden in considering whether national importance was established, citing for example to language in the decision that the Petitioner did not sufficiently demonstrate that the Beneficiary's work "offers original innovations that contribute to advancements in the software industry."

As to the additional evidence presented on appeal, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

Regarding the Petitioner's claim that SCOPS "mischaracterized" the proposed endeavor, we acknowledge that SCOPS, in stating the proposed endeavor, quotes from the Petitioner's initial filing, rather than stating the proposed endeavor as provided in response to the RFE. Nevertheless, we conclude that the decision overall does not reflect a mischaracterization of the proposed endeavor. Moreover, we are sympathetic to the difficulty here of describing the proposed endeavor based on the initial filing because, as noted above, the Petitioner did not initially define a proposed endeavor. Additionally, upon de novo review and for the reasons discussed below, we agree with SCOPS that the Petitioner has not established the national importance of the Beneficiary's proposed endeavor.

First, the Petitioner contends that the evidence related to its proprietary products, on which the Beneficiary is working, along with the list of its customers using these products and its place in the market, demonstrates the impact of the proposed endeavor. But we agree with SCOPS that the Petitioner has not sufficiently established that the Beneficiary's specific endeavor is of national importance, and instead primarily focuses on the activities of the company. The Petitioner provided evidence related to its current portable vibration analyzer and to a new vibration analyzer, still in development. The Petitioner describes these products as crucial to safety in manufacturing, as they monitor and assess the performance of the rotating equipment used in manufacturing such as motors, pumps, compressors, and turbines. The Petitioner also provided evidence related to another product on which the Beneficiary works, a predictive maintenance software platform. The Petitioner states that this software platform provides a centralized environment for collecting, analyzing, and visualizing data from rotating equipment and other mechanical assets. The Petitioner asserts that it holds a competitive advantage in the plant asset management market and that its products are "category leaders and growth enablers" in their respective segments. Because of this, the Petitioner contends that continued development and deployment of these tools will create high-value jobs and positively impact the economy, in addition to being in line with the goals of the U.S. government in fostering smart manufacturing.

However, the evidence in the record related to the Petitioner's products, its customers, and its position in the market is not sufficient to demonstrate that the Beneficiary's specific endeavor is of national importance. Although the Petitioner states that the Beneficiary is "working on" and "developing" these products as an employee of the Petitioner, the record is not sufficiently clear as to the Beneficiary's specific role with regard to these products and does not provide other details that would

be necessary to determine whether the Beneficiary's endeavor rises to the level of national importance. The Petitioner states that the Beneficiary's job title is "Senior Principal Full-Stack Software Engineer" and provided a list of technical job duties. However, even with this information the record does not establish, for example, where within the company, or where on these product teams, this role is situated or what the Beneficiary's specific responsibilities are in regard to these products.

As stated above, the Petitioner refers to a prior non-precedent decision of the AAO, *in re* 20813791, 2022 WL 16834227 (AAO Oct. 5, 2022), because it "contemplated an employee's work having greater impact and extending beyond the company." This decision was not published as precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceeding, the issues considered, and applicable law and policy. In the non-precedent decision to which the Petitioner refers, we discussed other non-precedent decisions because they were raised by the petitioner. Additionally, we note that, for example, in one of the non-precedent decisions raised by the petitioner, we stated that the record showed that the beneficiary was the lead software engineer for a 10-year project funded by a $100 million investment by the National Science Foundation, and that the Beneficiary was leading the team responsible for the project's primary software platform. *Matter of T-U-O-A-*, ID# 77945 (AAO Dec. 29, 2016). The record here does not similarly establish the scope of the Beneficiary's role, either on any specific projects or within the Petitioner as a whole.

The Petitioner also asserts that the various articles and evidence of executive orders support the endeavor's national importance. The record does contain evidence reflecting the United States' prioritization of promoting U.S. manufacturing, for example, the April 2025 Executive Order 14257, relating to reciprocal tariffs, which states that "increasing domestic manufacturing is critical to U.S. national security." The Petitioner also submitted White House fact sheets about bolstering domestic manufacturing and evidence that advanced manufacturing is on the National Science and Technology Counsel's Critical and Emerging Technologies List. The Petitioner asserts that this evidence demonstrates the national importance of the proposed endeavor, asserting that the United States is "in desperate need of engineers of the Beneficiary's caliber whose unique skills and experience" can help revitalize the manufacturing sector and bring back manufacturing jobs.

However, the alleged shortage of occupations or occupational skills does not render the Beneficiary's proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. Furthermore, the White House fact sheets, executive orders, and articles about the field do not discuss the Petitioner, the Beneficiary, or the proposed endeavor specifically. We agree with SCOPS that in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. While this evidence may help establish the national importance of promoting U.S. manufacturing, it does not demonstrate the potential prospective impact of the Beneficiary's specific endeavor.

Finally, we conclude that the opinion letter submitted by the Petitioner does not, as the Petitioner claims, support the national importance of the Beneficiary's proposed endeavor. The opinion letter

is from [redacted] of the [redacted] In support of the endeavor's national importance, [redacted] describes the fields which relate to the proposed endeavor, such as advanced manufacturing and advanced computing systems, and the sectors in which the Petitioner's products are used, such as the energy sector. [redacted] emphasizes that these are critical and emerging technologies and that the proposed endeavor relates to nationally important fields. [redacted] concludes that it is therefore "evident that there is substantial merit and national importance in ensuring that American businesses in critical sectors, such as [the Petitioner], be provided with all the necessary support to maintain their leading role in the global economy." Primarily, [redacted] repeats the claims of the Petitioner about the national importance of the Petitioner's industry and of the field of advanced manufacturing and concludes that this establishes the endeavor's national importance. But for the reasons discussed above, we conclude that this is insufficient to establish the national importance of specific proposed endeavor.

As a matter of discretion, we may use opinion statements submitted by the 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 evidence of eligibility. *Id.* Here, the opinion letter is of little probative value as it primarily repeats the Petitioner's claims about the importance of related fields in general, rather than credibly describing the potential prospective impact of the Beneficiary's proposed endeavor.

The Petitioner's claims on appeal do not overcome the basis for SCOPS' findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the Petitioner has not established the national importance requirement of the first prong of the *Dhanasar* framework, it has not demonstrated that the Beneficiary is eligible for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs. *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).

III. CONCLUSION

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that the Beneficiary is eligible 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.