U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41016013

Date: FEB. 3, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 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 EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

SCOPS denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either an advanced degree professional or an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

"Profession" is defined as of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] The listed occupations are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then establish 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 USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The alien is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(2).[3] The remaining 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. SCOPS determined that the Petitioner had established the substantial merit of his proposed endeavor, but had not satisfied the other requirements of the *Dhanasar* national interest test.

Since 1997, the Petitioner has owned a construction company in [redacted] Brazil, serving as its chief administrative and financial officer. The Petitioner has been in the United States since December 2022, when he arrived as a B-2 nonimmigrant visitor. He later changed status to that of an F-1 nonimmigrant student.

The Petitioner stated that his "proposed endeavor is to direct and oversee the operations of his Company, which will provide construction equipment rental, installation, and sales. . . . It will offer a range of scaffolding and shoring equipment essential for the successful completion of any construction project."

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the alien proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education.

We agree with SCOPS that the proposed endeavor has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the alien will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "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

[2] *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).

[3] In 2001, the Petitioner earned a degree in Brazil equivalent to a U.S. baccalaureate degree. He documented over 20 years of progressive post-baccalaureate experience. Engineering is, by statute, a profession.

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.

In denying the petition, SCOPS concluded that the Petitioner had not established the proposed endeavor's "geographic breadth" and its wider impact, and had not sufficiently corroborated key assertions. We agree with SCOPS on the ultimate outcome, but some points bear closer discussion.

Some of the points SCOPS raised with regard to national importance relate more directly to the second *Dhanasar* prong, concerning whether the Petitioner is well positioned to advance his proposed endeavor. For example, SCOPS noted a lack of evidence that the Petitioner has taken concrete steps to implement the endeavor, and SCOPS concluded that the Petitioner has not established widespread interest of potential customers. Because these are essentially second-prong issues, we will not discuss them in depth in the context of the first prong. But even without these issues, SCOPS adequately explained the first-prong issues underlying the denial of the petition.

The Petitioner's initial submission in June 2024 did not include any documentary evidence regarding the proposed endeavor. The documentation submitted with the petition concerned the Petitioner's business in Brazil and general background information about immigrant entrepreneurs. Colleagues and clients in Brazil wrote letters attesting to the Petitioner's skills and aptitude in problem-solving.

The Petitioner provided statistics about the construction industry, and scaffolding in particular, and stated that his proposed endeavor would contribute to the economy by paying taxes, employing 32 individuals by its fifth year, and providing services to its customers.

The Petitioner cited financial and employment figures relating to the proposed endeavor, stating they derive from "a comprehensive *Business Plan* with financial projections and market analysis," located at "Exhibit 9" of the initial submission.

But the record before us contains no Exhibit 9. A divider in the record marked "Exhibit 9: Beneficiary's Proposed Endeavor" precedes a single blank page, followed immediately by Exhibit 10.

Exhibit 10 is an expert opinion letter dated May 2024. The author of that letter stated that he had reviewed the business plan, but he did not cite or quote any information attributed to that plan. Instead, the evaluator made general claims, asserting, for example, that the Petitioner's "provision of customized, affordable, and efficient construction equipment rental services will directly support civil construction companies engaged in upgrading US infrastructure."

The Petitioner's response to a request for evidence (RFE) includes a 69-page document with some of the attributes of a business plan, including financial and staffing projections. But this document is dated August 2025, more than a year after the expert opinion letter dated May 2024. Therefore, the evaluator cannot have examined and considered the August 2025 document submitted in response to the RFE.

The Petitioner initially stated that his "company will target construction contractors in Florida," which "is the second-largest construction market in the U.S." He added: "the company will also target large

civil construction companies, focusing on projects involving bridges, dams, roads, airports, canals, and buildings."

In response to the RFE, the Petitioner stated: "Beginning in Year 2, the Company will expand to include a light manufacturing facility in either Alabama or Mississippi," and that the company's "products and services will support construction contractors and infrastructure developers nationwide, while contributing to regional workforce development and the revitalization of industrial capacity in economically distressed areas." Also, the August 2025 plan document adds an eight-employee production department to the personnel structure that the Petitioner described previously.[4]

On appeal, the Petitioner asserts: "The Business Plan explicitly identifies plans for expansion beyond Florida into additional high-growth markets including Texas and North Carolina." The record does not support this apparently new claim. The document submitted in response to the RFE includes multiple references to "Alabama or Mississippi" rather than Texas and North Carolina.

The expanded scope of the enterprise was not part of the endeavor as the Petitioner initially described it. A petitioner must meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

Furthermore, the Petitioner has cited statistics about the overall size of the construction industry in Florida and nationwide, but these figures do not show that his specific proposed endeavor to provide certain support services to customers in that industry will have a proportionate impact sufficient to show national importance. Likewise, the Petitioner has not shown that the creation of 32 or 40 jobs and payment of taxes "will significantly contribute to the economic revitalization of" "economically distressed areas of Florida."

In the denial notice, SCOPS stated that the record "continues to tie the endeavor to Central Florida. . . . The proposal for an Alabama or Mississippi manufacturing facility remains entirely conjectural."

On appeal, the Petitioner correctly observes that *Dhanasar* does not require impact on a geographically national scale. In that decision, we stated:

> [W]e do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications. Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance. . . . [W]e seek to avoid overemphasis on the geographic breadth of the endeavor. An 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.

Matter of Dhanasar, 26 I&N Dec. at 889-890.

[4] Although the RFE response shows a 40-employee structure, on appeal the Petitioner returns to the initial estimate of "32 full-time jobs."

Nevertheless, the burden is on the Petitioner to establish that his endeavor will have the broader implications, either locally or nationally, that *Dhanasar* demands.

The document in the RFE response indicated that the Petitioner's endeavor would have "national-level impact" by, for example, improving U.S. infrastructure, supporting the growth of the construction industry, and addressing demands for construction materials. But the Petitioner did not establish that his endeavor would provide these services at a sufficient level to have national importance, and he did not cite evidence showing that businesses of the type and size described in the proposed endeavor have demonstrably had the sort of impact on the construction industry, or on the economy, that the Petitioner attributes to his endeavor.

In response to the RFE, the Petitioner stated that his designs incorporate safety features that reduce accidents, thereby preventing injuries, construction delays, and costs associated with those factors. The Petitioner essentially repeats this claim on appeal, stating that his "methodologies . . . directly mitigate those risks" and "address industry-wide inefficiencies and safety hazards." The Petitioner cites no specific data or documentation to show that his company's scaffolding and shoring equipment is safer than what is already available to U.S. construction companies.

The Petitioner also asserts that, by reducing construction delays, buildings such as schools and hospitals can open more quickly, thus contributing to education, health care, and other fields practiced by potential clients. But this argument is tenuous and speculative, and, as above, the direct impact would be limited to the Petitioner's clients.

On appeal, the Petitioner disputes SCOPS' conclusion that his claims are uncorroborated. The Petitioner states that the letters from associates in Brazil show that his past work has reduced both costs and construction time, and that he has passed along his methods to others in the field. But the Petitioner has not explained how these benefits to individual clients have the broader implications necessary to show national importance.

Regarding the claim that others can learn and adopt the Petitioner's methods, here again the burden is on the Petitioner to show that the implications are broader than the immediate, local level. The petitioner in *Dhanasar* submitted evidence of his educational activities at the middle school and university levels, but we concluded that he had not established that he "would be engaged in activities that would impact the field of STEM education more broadly." *Matter of Dhanasar*, 26 I&N Dec. at 893. The same reasoning applies here.

The Petitioner has identified several issues that are nationally important in the aggregate, such as job creation and worker safety. But he has not documented that his specific proposed endeavor has broader implications reaching the level of national importance. The Petitioner's essential contention in this regard is that ripple effects from jobs created and wages and taxes paid will propagate more broadly, and that the Petitioner and his proposed endeavor should receive credit for these indirect "downstream impacts." This argument is not persuasive. The Petitioner has not demonstrated that his proposed endeavor has national importance, or that any potential ripple effects can be reliably traced back to his actions alone, and not those of other people or businesses within the chain.

In this respect, it is significant that, while the Petitioner's associates have identified specific, local benefits that arose from his work in Brazil, the record does not document any nationally important "downstream impacts" that resulted from that work. And the record does not show why we should expect such impacts in the United States.

SCOPS, in the denial notice, identified several ways, amenable to objective documentation, that the Petitioner could establish the broader impact of his work, and concluded that the Petitioner had not submitted evidence showing those effects. On appeal, the Petitioner asserts that SCOPS imposed an unreasonably high threshold of evidence and proof, but the Petitioner has not shown that letters from a small number of associates, attesting to client-centered impacts, should have comparable weight.

For the above reasons, we agree with SCOPS that the Petitioner has not met his burden of proof to establish, by a preponderance of the evidence, that his proposed endeavor has national importance.

In light of the above conclusions, detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Because the Petitioner has not otherwise established eligibility for the classification sought, we need not reach, and therefore reserve, the second and 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 established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal 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.