U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40989182

Date: FEB. 25, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a chief executive officer of a civil engineering and project planning company, 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 the record did not establish that a waiver of the required job offer, 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.

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*.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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,[2] 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

We will first address whether the Petitioner has established that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest.

SCOPS concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. SCOPS also determined that the Petitioner was not well positioned to advance his proposed endeavor. And SCOPS concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

The Petitioner states on appeal that the evidence he submitted in the record prior to and at appeal demonstrates that he meets all three prongs under the *Dhanasar* framework and merits a discretionary waiver of the job offer, and thus the labor certification, in the national interest.

A. The Proposed Endeavor

The Petitioner described his endeavor as a "CEO" of an "advanced engineering consulting" company providing "professional, scientific, and technical services specializing in sustainability and nuclear material handling." The Petitioner's proposed endeavor would provide "negotiation services," "full engineering project consultancy," and "assessments & inspections" services to "focus on all stages of the engineering process…from case studies and plan development to budget management, personnel coordination, and project execution" for "house nuclear assets." As CEO, the Petitioner asserted that

[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).

his endeavor "encompasses consulting services targeted at both the broader civil engineering field and the highly specialized niche of nuclear facility infrastructure…[i]n addition to…includ[ing] a comprehensive professional training program." It also proposes providing "specialized services in structural engineering, risk assessment, emergency response planning, regulatory compliance, and capacity building…tailored to environments housing nuclear assets." The Petitioner avers that his endeavor is nationally important because its goals include "generating employment, contributing to tax revenue and the local economy, consuming U.S.-based goods and services, and offering consulting and training in civil engineering and nuclear infrastructure" which will "expand the number of qualified professional, improve physical, human, and environmental safety, and support the advancement of critical and emerging technologies related to clean energy production and storage…within one of the most nuclear active nations in the world."

B. The Proposed Endeavor's Substantial Merit and National Importance

At the time of filing, the Petitioner submitted his signed statement copies of his educational documents, documentation from Brazil documenting his job licensure, tax payments and income, business existence and employment experience, documentation supporting the registration of the conduit for his proposed endeavor [redacted] a business plan supporting his proposed endeavor, and economic impact analysis describing the job creation and tax and salary expenditures flowing from his proposed endeavor, and documentation supporting the substantial merit of the field within which his proposed endeavor existed.

In response to the request for evidence (RFE), the Petitioner submitted an expert opinion letter authored by [redacted] associate professor, [redacted] additional documentation supporting the substantial merit of the proposed endeavor, additional documentation from Brazil supporting his salary as well as recommendations, articles he authored, and presentation connected with employment, three letters of recommendation and a letter from the representative of a U.S. corporation expressing an intent to collaborate with the Petitioner and his proposed endeavor in the near future.

SCOPS determined that whilst the Petitioner was categorically eligible for classification in the employment based second preference permanent immigrant classification, he did not demonstrate he merited a waiver of the requirement of a job offer and thus a labor certification upon application of the analytical framework we first explicated in *Dhanasar*.

On appeal, the Petitioner asserts that SCOPS abused its discretion by failing to consider the totality of the evidence and making incorrect conclusions of law and statements of the facts in analyzing the evidence. In particular, the Petitioner claims that SCOPS issued its decision in error based on a misapplication of relevant standards and a failure to adequately consider extensive and well-documented evidence. Based on evidence in the record, he asserts his proposed endeavor is of national importance. We disagree with the Petitioner's assessment of SCOPS' decision. Upon de novo review, we agree with SCOPS' determination that the Petitioner did not establish the national importance of his proposed endeavor.[3]

[3] Whilst we may not discuss every document submitted, we have reviewed and considered each one.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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. In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See 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 a 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. What is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So, it is not what duties or what occupation the alien will fill or perform but his or her actual plan with his or her occupation and duties that is examined.

The Director concluded that the Petitioner did not demonstrate their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

As stated above, the Petitioner's proposed endeavor is to function as the "CEO" of an "advanced engineering consulting" company providing "professional, scientific, and technical services specializing in sustainability and nuclear material handling." Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The infirmity in the Petitioner's description of his endeavor is patent upon examination into the evidence and argument he introduced into the record. The Petitioner's evidence and argument do not help his carry his burden of production and persuasion because it does not relate to the proposed endeavor's national importance under the first prong of the *Dhanasar* framework.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters or opinion statements from experts supporting the petition is not presumptive evidence of eligibility. *Id.* As stated above, the Petitioner submitted an expert opinion letter authored by [redacted] associate professor, [redacted]

[redacted] dated Mary 30, 2025. But [redacted] opinion statement does not illustrate how the Petitioner's proposed endeavor rises to a level impacting national importance.

[redacted] posits that an endeavor like the one the Petitioner's proposes "is essential for public safety, environmental security, and regulatory compliance in the "the safe management of nuclear waste," "upholding rigorous regulatory standards," and other aspects of "consulting services targeted at both the broader civil engineering field and the highly specialized niche of nuclear facility infrastructure…" such as a movement of "the energy sector to cleaner sources." But in evaluating national importance we are not concerned with the importance of the field; we are evaluating the specific proposed endeavor. And as we stated earlier, simply proposing an endeavor adjacent to an area of substantial merit or special concern to the United States does not such an endeavor nationally important as a default.

[redacted] also opines that the Petitioner's "proposed endeavor…is projected to generate significant economic benefits within the United States." Specifically, [redacted] states that a "RIMS II-based economic impact analysis provided in [the Petitioner's] business plan [demonstrates the Petitioner's proposed endeavor] is expected to create 6 direct jobs in its first year and expand to a total of 25 jobs by its fifth year or operation." In *Dhanasar* we stated "[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." *See Dhanasar* at 890. [redacted] opinion does not provide context to help evaluate if the projected potential employment between years one through five is significant. Moreover the "RIMS-II based economic impact analysis" appears to utilize inputs for the State of Florida as a whole and not any one specific area wherein which the Petitioner expects employment creation. And neither [redacted] opinion nor other evidence in the record further identifies with specificity where the workers would be employed and if the location of employment is in an economically depressed area.

[redacted] promotes the proposed endeavor's potential enhancement of societal welfare by strengthening the safety, resilience, and sustainability of infrastructure that directly affects public well-being." And even the Petitioner's business plan couches his endeavor in terms of targeting his services to small and medium sized enterprises and individual governmental entities who may seek his consulting services in various aspects of civil engineering and nuclear facility infrastructure. The evidence in the record demonstrates that the proposed endeavor's "work in nuclear safety, environmental risk mitigation, and civil engineering diagnostics" has substantial merit. But it is unclear from [redacted] opinion how a single "advanced engineering consulting" company providing "professional, scientific, and technical services specializing in sustainability and nuclear material handling" even when aligned with U.S. government recognized priorities would exert an impact either nationally or globally on the field or exert broader implications that impact matters rising to the level of national importance. Or in other words, it is not adequately patent either from [redacted] opinion and or any applicable relevant evidence in the record how "strengthening the safety, resilience, and sustainability of infrastructure" whilst undertaking the Petitioner's proposed endeavor would implicate broader matters in a manner rising to a level of national importance beyond the benefit gained by the clientele or entities that elect for the services provided by the Petitioner's proposed endeavor.

The Petitioner's employment verification letters, letters from employers, and letters of recommendation do not reflect how the proposed endeavor implicates national importance because the letters focused on the Petitioner's past work. And [redacted] opinion of the national importance of the Petitioner's proposed endeavor also notes the Petitioner's "two decades of applied engineering experience in nuclear and civil infrastructure." When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior similar work does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

And the Petitioner anticipates a hiring spree to staff their proposed endeavor stemming from increasing gross and net income and resulting in increasing expenditures on salary. But, as mentioned above, the RIMS-II based economic impact analysis utilizes inputs relevant to the State of Florida as a whole and not a specific area where the anticipated employment would be generated. And we observe that the Petitioner's business plan contains financial data projections related to employment, such as tax figures and salary expenditures without explanation. But these aspirations do not demonstrate the national importance of the endeavor because the tax and employment goals, whether realized or not, would not extend beyond the endeavor itself to have an impact on a level of national importance. Or in other words, the record does not contain sufficient probative, material, or relevant evidence showing how the endeavor's hiring plan would influence the area's unemployment rate or how the endeavor's operations and revenue rose to a level of national importance. So, it is not clear from the record what the true magnitude of the Petitioner's anticipated job creation for the proposed endeavor is and where it would be located such that we can evaluate if it would have a substantial prospective positive economic effect commensurate with national importance.

As stated above, the Petitioner offered sufficient evidence to support the substantial merit of their proposed endeavor and offered the same evidence to support the national importance of their proposed endeavor. But not every endeavor that purports to address matters adjacent to U.S government initiatives is nationally important. We said in *Dhanasar* that we focus on "the specific endeavor that the foreign national proposed to undertake" and "look for broader implications" to determine the proposed endeavor's national importance. *See Dhanasar*, 26 I&N Dec. at 889. The evidence in the record did not adequately demonstrate how the Petitioner's activities broadly implicated matters related to civil engineering and nuclear infrastructure. The Petitioner's target market is composed of small and medium sized enterprises (SMEs) and individual governmental entities. It is unclear how the Petitioner's duties in what is most clearly described as engineering consulting improves matters of importance to U.S. in a manner consistent with impacting the field nationally, or even globally, or exerting broader implications rising to a level of national importance. The record does not contain evidence which would sufficiently support extrapolating the Petitioner's consulting and civil engineering or nuclear facility construction project development activities to determine whether the potential prospective impact of the Petitioner's proposed endeavor has broader implications or positive economic impact rising to a level of national importance.

In sum, the record does not contain relevant, probative, or material evidence establishing the Petitioner's proposed endeavor has potential positive impact either through national or even global impact to the field or broader implications rising to a level of national importance. So, we conclude that the Petitioner has not established that his proposed endeavor is of national importance.

C. Categorical Eligibility for Employment Based Second Preference as An Advanced Degree Professional

SCOPS concluded the Petitioner met the eligibility requirements for the requested EB-2 permanent immigrant classification. But, upon de novo review, we conclude the evidence the Petitioner submitted into the record does not sufficiently establish the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree or as an alien of exceptional ability. So, for the reasons set forth below, we will withdraw SCOPS determination that the Petitioner has demonstrated eligibility for classification in the EB-2 permanent immigrant category.

As stated previously, the regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree to mean any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree and so permit classification as an EB-2 permanent immigrant. Progressive experience can be demonstrated by the Petitioner by providing letters from current or former employers showing that they have at least five years of progressive post-baccalaureate experience in the specialty. The regulation at 8 C.F.R. § 204.5(g)(1) requires letters from current or former employers include the name, address, and title of the writer, and a specific description of the duties performed.

The record reflects the Petitioner earned a bachelor's degree in civil engineering from [redacted] in Brazil in 2004. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that baccalaureate degrees earned after a four- or five-year course of study in Brazil are the single source equivalent to a United States bachelor's degree. So, the Petitioner's Brazilian bachelor's degree in civil engineering is a foreign equivalent degree to a U.S. baccalaureate degree in computer science from an accredited U.S. institution of higher education.

But the Petitioner has not submitted adequate documentation to demonstrate that he has accumulated at least five years of progressive post-baccalaureate work experience. In support of his progressive work experience, the Petitioner submitted evidence in the form of work certificates, resignation letters, and proof of employment letters from various employers the Petitioner worked for, as well as salary and tax documentation from Brazil. But the letters did not contain a specific description of the duties performed as required by the regulation. The omission of a specific description of duties performed in the work certificates, resignation letters, and proof of employment letters the Petitioner submitted curtails our ability to evaluate whether the work experience the Petitioner presents is progressively responsible.

Consequently, we are unable to determine if the Petitioner has accumulated five years of post-baccalaureate progressive work experience. And the record as it is currently composed does not contain sufficient relevant, material, or probative evidence to demonstrate the Petitioner has earned a U.S. master's degree or its single source foreign equivalent. So, we conclude the Petitioner has not demonstrated eligibility for classification in the employment based second preference permanent immigrant as an advanced degree professional.

And the record does not demonstrate the Petitioner has claimed eligibility for EB-2 classification as an individual of exceptional ability or identified and presented pertinent evidence in the record as support of exceptional ability. So, as stated above, we withdraw SCOPS' conclusion that the Petitioner demonstrated his categorical eligibility for EB-2 permanent immigrant classification. The Petitioner should be prepared to address his categorical eligibility for EB-2 classification in any future proceedings requiring a petitioner to demonstrate eligibility as an advanced degree professional or individual of exceptional ability.[4]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he does not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. We further withdraw SCOPS' conclusion that the Petitioner established that he was eligible for classification as a permanent immigrant in the EB-2 category. We reserve the issue of whether the Petitioner demonstrated eligibility under the remaining prongs of the *Dhanasar* analytical framework. *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). So, we will dismiss the Petitioner's appeal.

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.

[4] As the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal, further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification by issuing a request for evidence would serve no legal purpose.