U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40638906

Date: JAN. 5, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an artificial intelligence (AI) algorithm developer, requests classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offered requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus the need for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker job protections are "in the national interest." *Id.*

Service Center Operations (SCOPS) denied the petition. SCOPS found the Petitioner eligible for EB-2 classification and that his proposed U.S. work has "substantial merit" and "national importance." But SCOPS concluded that he did not demonstrate that he is "well positioned" to advance his proposed endeavor or that, on balance, a waiver would benefit the United States. On appeal, he contends that SCOPS disregarded evidence and imposed novel requirements.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has changed how he would pursue his endeavor and that, without further information, we cannot adequately analyze his qualifications for a national interest waiver. We will therefore withdraw SCOPS' decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or their equivalents, or as aliens of "exceptional ability" in the sciences, arts, or business. *See* section 203(b)(2)(A) of the Act. To protect jobs for U.S. workers, this immigrant visa category generally requires prospective U.S. employers to offer aliens work and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job-offer and labor-certification requirements by

demonstrating that waivers of the U.S.-worker protections would be "in the national interest." Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or aliens of exceptional ability, petitioners may warrant waivers of the job-offer and labor-certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer and labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016); *see generally* 6 *USCIS Policy Manual* F.(5)(D)(1), www.uscis.gov/policy-manual.

II. ANALYSIS

The record shows the Petitioner's receipt of: a Chinese bachelor's degree in measurement and control technology; a U.S. master's degree in electrical engineering; and a U.S. doctoral degree in electrical, electronics, and computer engineering. While studying in the United States, he worked as a research assistant at his university, presenting five published research articles he co-authored at academic conferences. In May 2023, he began working as a senior AI algorithm developer for a U.S. designer of vision, safety, security, and monitoring systems for vehicle manufacturers. In this role, he develops AI algorithms aimed at improving motor vehicle safety and advancing intelligent transportation systems.

The Petitioner states:

> My proposed endeavor is to develop and refine object detection and tracking algorithms using advanced machine learning and deep learning techniques, in order to enhance vehicle safety and advance intelligent transportation systems, with a focus on practical applications in advanced driver-assistance systems and autonomous driving technologies.

The Petitioner emphasized that:

> my proposed endeavor is distinct from my position of employment. However, I am providing my employment information to confirm my commitment and capacity to advance the proposed endeavor in my employment. This position with [my employer] serves as my chief opportunity to pursue my proposed endeavor at this time.

Petitioners should explain their endeavors "in a straightforward manner and clearly lay out … whether the endeavor will be furthered through the course of the person's duties at a particular employer or some other way." 6 *USCIS Policy Manual* F.5(D)(3). The Petitioner claims that his endeavor is "distinct from my position of employment." But he has indicated that he would pursue his proposed

endeavor through his employment. Thus, his endeavor essentially involves his continued performance of his job duties.

On appeal, the Petitioner continues to indicate that he "is currently employed as a senior AI algorithm developer at [my employer]." USCIS records, however, indicate that the Petitioner no longer works for his employer. In June 2025, about a month before this petition's denial, the employer withdrew its nonimmigrant work visa petition for him, stating that the company stopped employing him the week before.

If eligible for a national interest waiver, the Petitioner's filing need not include a U.S. job offer. *See* section 203(b)(2)(B)(i) of the Act. But, because he no longer works for his claimed employer, the record does not explain how he would pursue his proposed endeavor. If the Petitioner's venture has materially changed from his original proposal, USCIS would dismiss the petition. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility for a requested benefit "at the time of filing the benefit request"); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (barring a petitioner from making material changes to a pending petition in an effort to make it conform to USCIS requirements). Alternatively, the Petitioner would need to establish that his endeavor has not materially changed.

The second prong of the *Dhanasar* framework focuses on a petitioner, not their proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. But we decline to review SCOPS' finding of insufficient evidence that the Petitioner is well positioned to advance his endeavor. Circumstances affecting relevant prong-two factors – such as the interest of potential customers, users, investors, or others, *id.* – may have changed since he stopped working for his former employer. We will therefore remand the matter.

On remand, SCOPS should ask the Petitioner to explain how he intends to pursue his proposed U.S. endeavor in light of his potentially changed employment. If he stopped working for the employer in June 2025, he should explain why this appeal indicates his continuing employment with the company.[1] SCOPS should consider whether his endeavor has materially changed and whether any change would affect its prior analysis under *Dhanasar*'s first prong.

SCOPS should afford the Petitioner a reasonable opportunity to submit any evidence or argument in response to SCOPS' inquiries. Upon receipt of a timely response, SCOPS should review the entire record and enter a new decision.

[1] *See* section 212(a)(6)(C)(i) of the Act (rendering inadmissible "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter"). Visa petition proceedings are an inappropriate forum for determining substantive issues of admissibility. *See Matter of Christo's*, 26 I&N Dec. at 540-41 (citation omitted). Thus, review of any potential misrepresentation would be a "finding of fact," not an admissibility determination. USCIS decisions should include specific findings on material issues of law or fact that arise, including fraud or material misrepresentation. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also* 5 U.S.C. § 557(c). But USCIS or another federal agency would make any formal admissibility finding regarding the Beneficiary in separate proceedings.

III. CONCLUSION

USCIS records indicate that the Petitioner would no longer pursue his stated proposed endeavor through his claimed employment. We cannot adequately analyze his qualifications for a national interest waiver without knowing how he plans to pursue his endeavor. SCOPS should allow the Petitioner to address this issue on remand.

ORDER: The decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

NOTICE: Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. *See* section 240 of the Act, 8 U.S.C. 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for future U.S. visas or other immigration benefits.