U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37091470

Date: JUL. 15, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a software developer, 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

SCOPS denied the petition, concluding the record did not establish that the Petitioner qualified for a national interest waiver. The matter is now before us on appeal. 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 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates 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." *Id. 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:

- 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.[2]

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[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 to be discretionary in nature).

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

SCOPS concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal 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.

A. The Proposed Endeavor

The Petitioner, who was employed at the time of filing as a software developer for a company providing services to a multinational retail corporation, described both initially and in response to a request for evidence (RFE) a proposed endeavor focused, in part, on using advanced computer vision and machine learning for real-time data processing and decision-making to enhance autonomous vehicle safety and efficiency. His RFE response identified the following four projects as aspects of his proposed endeavor:

1. Advanced Driving Assistance System for Autonomous Vehicles;
2. Machine Learning-Enhanced Computer Vision;
3. Deep Learning Analysis of Ediacaran Lithology Structures;[3] and
4. Automotive Diagnostics System for Predicting Component Failures.

SCOPS denied the petition, concluding that the Petitioner did not provide a clear explanation of his proposed endeavor and had attempted, in response to the RFE, to materially change the endeavor by describing projects not previously referenced in the record.

Upon de novo review, we observe that the record contains documents submitted in response to the RFE that serve to further explain the Petitioner's proposed endeavor; they did not materially change it. Because the documentation submitted in response to the RFE clarified, but did not materially change, his proposed endeavor, we withdraw SCOPS' determination that he made a material change to his petition. However, for the reasons detailed below, the appeal will be dismissed.

B. Substantial Merit and National Importance of the Proposed Endeavor

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. SCOPS determined that the Petitioner did not establish the national importance of his proposed endeavor and did not comment on whether his proposed endeavor had substantial merit. As discussed below, because the Petitioner did not demonstrate that he is well positioned to advance the proposed endeavor as required under the second prong of the *Dhanasar* framework, we will reserve the issue of whether he established eligibility under the first *Dhanasar* prong.

C. Well Positioned to Advance the Proposed Endeavor

[3] It is unclear how this project relates to enhancing autonomous vehicle safety and efficiency.

Under the second prong, the Petitioner must demonstrate that he is well positioned to advance the proposed endeavor. 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.* at 890.[4]

On appeal, the Petitioner highlights his advanced degree in engineering, his experience presenting his research at conferences in his field, and his citation percentiles for his published peer-reviewed papers. The Petitioner states that he possesses a record of success to demonstrate that he is well positioned to advance the proposed endeavor. However, the record does not sufficiently establish that the Petitioner is well-positioned to advance his proposed endeavor.

The record includes letters of support that discuss the Petitioner's research projects and indicate how researchers have cited the Petitioner's work in their own investigations. However, while these letters are supportive in tone and highlight positive factors in the Petitioner's research, they do not contain sufficient evidence of the impact of the Petitioner's work, specifically, on the field of automotive technology, nor do the letters explain how his research has impacted any particular field.[5] Although the record shows that the Petitioner's research has been utilized by other researchers, that evidence is not sufficient to demonstrate that the Petitioner has made progress toward enacting his specific endeavor to "enhance vehicle safety and efficiency through artificial intelligence-driven solutions."

We acknowledge that the Petitioner holds a master's degree in a science, technology, engineering, or mathematics (STEM) field which is tied to his proposed endeavor. We further recognize the Petitioner's assertion that his work falls within a critical and emerging technology area, and we acknowledge the importance of progress in STEM fields and the role of individuals with advanced STEM degrees. However, a degree, in and of itself, is not a basis to determine that a person is well positioned to advance the proposed endeavor. *See generally 6 USCIS Policy Manual* at F.5(D)(2), https://www.uscis.gov/policymanual. When evaluated in the context of the full record, the Petitioner has not shown that he is well positioned to advance his proposed endeavor as contemplated by *Dhanasar*.

As noted above, in addition to education, we look at a variety of factors in determining whether a petitioner is well positioned to advance their proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. In *Dhanasar*, the petitioner held three advanced degrees, including a Ph.D., tied to his proposed research which had significant implications for U.S. national security and competitiveness. To determine whether the petitioner was well positioned to continue to advance his proposed endeavor, we also favorably considered the significance of his research which had been corroborated by evidence as having peer and government interest; the significance of his role in his research projects; consistent funding from government agencies of his research projects; and his position with a U.S. university

[4] *See generally* 6 *USCIS Policy Manual*, F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[5] *See generally* 6 *USCIS Policy Manual* at F.5(D)(1) (providing, as guidance, examples of evidence that may establish that a petitioner is well-positioned, including letters from experts in the person's field, describing their past achievement and providing specific examples of how they are well positioned to advance the person's endeavor, and evidence demonstrating how the person's work is being used by others, such as contracts with companies to use the person's products, patents or licenses for innovations the person developed).

where he intended to conduct his proposed research work. *Id.* at 892-93. Here, while we recognize the Petitioner's advanced degree and the general alignment of his academic background with his proposed research, a master's degree and a record of conference publications are not, on their own, sufficient to demonstrate that the Petitioner is particularly well positioned to advance the proposed endeavor.

Regarding his experience, at several points within the record the Petitioner references how his current employment as a software developer aligns with his proposed endeavor in terms of the skills he uses and the type of research he conducts. However, he further states, "I want to emphasize that my proposed endeavor is distinct from my position of employment." While a petitioner's current employment is not required to be connected to a proposed endeavor, the Petitioner here has not delineated how he will fulfill the responsibilities of his employment and simultaneously pursue his proposed research activities.[6] For example, although he mentions fellow researchers with whom he will work, he has not identified their roles or detailed any expectations concerning individual responsibilities, a timeline, or specific outcomes other than to conduct further research with the presumption of technological development. The Petitioner does not discuss any logistics necessary to carry out his endeavor or otherwise present a model or plan outlining an endeavor independent of his intention to continue his present employment.

Further, the record does not demonstrate that the Petitioner has generated interest in his proposed endeavor among potential customers, users, investors, or other relevant entities or individuals. In *Dhanasar*, we noted that the petitioner had conducted research and postgraduate research that he sought to continue as his proposed endeavor and that he had developed a validated computational model and a novel numerical method for calculating data relevant to his proposed endeavor. *Dhanasar* at 891. We also discussed the significance of the petitioner's research in his field, which was corroborated by evidence of sustained peer and government interest in his research, as well as by consistent government funding of the petitioner's research projects. We considered this in determining whether the petitioner was well-positioned to continue to advance his proposed endeavor. *Id.* at 893. Here, the Petitioner has not provided evidence that he previously received funding for his research or has secured funding to continue pursuing his specific proposed endeavor in the future. We note that the letters of support claiming broader implications for the Petitioner's research do not express knowledge of any interest from academic institutions or other entities in supporting or funding the Petitioner's proposed endeavor. The Petitioner himself does not identify any specific clients or companies who may take—or who have already taken—an interest in supporting or using his research.

The Petitioner also emphasizes his citation records, noting that his six peer-reviewed conference articles (two of them first-authored) have accumulated 45 citations by the time of filing, increasing to 68 by the time he submitted his response to SCOPS' RFE. He highlights five papers that, according to him, ranked among the top [redacted] of the most-cited articles in the field of machine learning, published in 2023. While the citations may indicate some degree of interest in his research from his colleagues and peers in the field, this evidence alone is insufficient to demonstrate a level of interest or a record of research success that renders him well-positioned. The Petitioner's citation record must be weighed

[6] It is unclear how much time the Petitioner plans to devote towards research versus his responsibilities as a software developer.

alongside other qualitative indicators of impact and influence. Further, citation frequency, which may include self-citations, is quantitative in nature and does not reveal the reasons for the citations, which involve a qualitative analysis. The Petitioner therefore has not demonstrated that the number of citations received by his published articles, in and of themselves, reflect a record of success sufficient to meet *Dhanasar's* second prong. Moreover, while we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision, we found "[t]he petitioner's education, expertise, and experience in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Dhanasar,* 26 I&N Dec. at 893.

The Petitioner asserts that he will continue his research while being employed as a software developer. He further contends that he will continue his research with other researchers in his field. However, the Petitioner has not provided sufficient documentation detailing how he plans to carry out his proposed research activities. For instance, the Petitioner has not provided evidence of progress toward achieving the specific goals of his proposed endeavor, a research plan, timeline, funding information, or evidence of institutional or organizational support for the continuation of his research endeavor. Nor has he shown that there is established interest in his future research projects. The Petitioner, therefore, has not sufficiently explained how he is well positioned to advance his research endeavor.

The record indicates that the Petitioner has conducted, published, and presented original research. While we recognize that, as a researcher, the Petitioner's work has contributed to the larger pool of research in his field, not every individual who has performed original research will be found to be well-positioned to advance a proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among potential customers, users, investors, or other relevant entities or individuals supports such a finding. *Id.* at 890. In view of the above, we conclude that the Petitioner has not satisfied the second prong of the *Dhanasar* framework with regard to his positioning to advance his proposed endeavor.

D. Whether On Balance, Waiving the Job Offer Requirement Would Benefit the United States

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. SCOPS determined that the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As discussed above, because the Petitioner did not demonstrate that he is well positioned to advance the proposed endeavor as required under the second prong of the *Dhanasar* framework, we will reserve the issue of whether he established eligibility under the third *Dhanasar* prong.

III. CONCLUSION

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. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver as a matter of discretion. Because the identified

reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the first and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). The petition will remain denied.

ORDER: The appeal is dismissed.