U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40765814

Date: JULY 16, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a postdoctoral fellow at the time of the petition's filing, 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).

USCIS denied the petition, concluding the record did not establish that a waiver of the required job offer, and thus of the 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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. 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,[1] grant a national interest waiver if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

[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 Petitioner's proposed endeavor is to "continue advancing nanoscale vacuum channel transistors (NVCTs) and vacuum-based instruments for ultra-high frequency and high-power electronics applications."

Service Center Operations (SCOPS) determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional based on his Ph.D. degree in electrical engineering. However, they concluded that the Petitioner did not establish his eligibility under the *Dhanasar* analytical framework. Specifically, although SCOPS found substantial merit in the proposed endeavor and that the Petitioner is well positioned to advance it, they concluded the Petitioner did not establish his proposed endeavor's national importance or that, on balance, waiving the job offer requirement would be beneficial to the United States. On appeal, the Petitioner contends that SCOPS' decision contains erroneous statements of fact and misapplied the law.

Upon review of the record, we will withdraw SCOPS' decision, as it is unclear whether SCOPS fully analyzed the record in making their determination. For example, as raised by the Petitioner on appeal, we observe that SCOPS incorrectly refers to the Petitioner as an "Infectious Disease Researcher" in one part of the decision and inaccurately states the Petitioner "intends to continue working for [redacted] Inc. as an Electrical Engineer." However, as the Petitioner notes, the Petitioner did not claim he would be working for '[redacted], Inc." and he consistently stated that his endeavor involves research activities related to vacuum nanoelectronics. We also observe that SCOPS' decision used incorrect pronouns at times when referring to the Petitioner.

Additionally, SCOPS stated that "[i]t is not known how much time the beneficiary would devote to the proposed endeavor while also performing his regular duties for an employer." However, the Petitioner's personal statement expressed that "I intend to devote over 80% of my professional efforts to hands-on research, design, modeling, and experimental validation, while the remaining time will be spent mentoring junior researchers, collaborating with academic and industrial partners, and contributing to knowledge-sharing efforts within the broader scientific community." SCOPS also found that "[t]he record does not support a conclusion that the petitioner is or would be engaged in any ongoing research activities, such that USCIS could conclude the work would have the potential to impact the field or industry more broadly through publications, conferences, or other venues in which research is disseminated." But, again, the Petitioner's personal statements discussed his intended research activities. For instance, he stated that "[t]he knowledge and findings generated from my research will be disseminated through high-impact peer-reviewed journals, presentations at leading national and international conferences, and active collaboration with research and industry partners."[2] In light of these statements, it is unclear how SCOPS reached their conclusions and whether they fully reviewed the record in making their determination.

[2] In his initial filing, the Petitioner stated that he was employed as a postdoctoral fellow in the Department of Electrical and Computer Engineering at [redacted] University. As discussed below, it is unclear whether the Petitioner is still employed in this capacity. While we acknowledge the Petitioner's assertion that his proposed endeavor should be viewed as separate from his proposed employment, we note that his employment activities may, nevertheless, inform both *Dhanasar's* first and second prongs. As such, on remand, the Petitioner should be prepared to address both his current and future employment plans.

SCOPS decision also confusingly states:

> While the position/findings may have substantial economic value to an employer, and their clients, the petitioner does not demonstrate how the beneficiary's duties will extend beyond an employer to impact the industry or nation as a whole. At issue, however, is not whether the petitioner would benefit from the beneficiary's proposed endeavor, but whether the endeavor has broad implications with substantial positive economic effects.

But here, the Petitioner does not appear to argue his proposed research endeavor's national importance based on its substantial positive economic effects. Rather, he appears to claim his endeavor is nationally important because it would have broader effects on the field. In *Dhanasar*, we stated that "we look for broader implications," noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Matter of Dhanasar*, 26 I&N Dec. at 889. While a proposed endeavor's economic impact may help demonstrate national importance, it is but one consideration under *Dhanasar's* first prong. *Id.*

SCOPS' decision also stated that "[t]he record is not supported by any letters from interested U.S. government agencies or quasi-governmental entities in the United States (e.g., federally-funded research and development centers) establishing that the agency or entity has expertise in the proposed endeavor and that the proposed endeavor promises to advance a critical and emerging technology or is otherwise important for purposes of maintaining the United States' technological prominence." However, we note that, while letters from interested U.S. government agencies or quasi-governmental entities in the United States may be helpful in determining whether an endeavor rises to the level of national importance, they are not required to establish eligibility.

Turning to *Dhanasar's* second prong, SCOPS found that the Petitioner demonstrated he is well positioned to advance his proposed endeavor. However, the decision lacked any analysis explaining how they reached their conclusion. And, based on the record, we question whether the Petitioner has met his burden to show he satisfies this prong. *See Matter of Chawathe*, 25 I&N Dec. at 375 (stating that petitioners bear the burden of establishing their eligibility and under this standard we consider the quality, such as relevance and probative value, of the evidence, in addition to quantity).

For instance, the Petitioner stated that he is currently working as a postdoctoral fellow where he is responsible for conducting research aimed at the optimization of optical system design through the use of digital micromirrors. He asserts that he therefore "not only has a clearly defined plan, but he is currently carrying out the proposed endeavor already." However, we observe that the record includes an employment offer letter for a postdoctoral fellow position from [redacted] University stating that the Petitioner's initial appointment will begin on September 9, 2024 and end on July 3, 2025. It appears the Petitioner's term expired prior to SCOPS' denial and the Petitioner has not presented evidence that his position has been renewed. And while the Petitioner states that his employment is separate from his proposed endeavor, the record lacks sufficient evidence illustrating how he plans to carry out his proposed endeavor, particularly in light of the expiration of his employment term. It does not appear that the Petitioner has presented adequate evidence of a model or plan explaining how he plans to pursue his proposed endeavor.

Additionally, while the Petitioner asserts that his publication in "renowned scientific journals" and citation record is evidence of his research success, the record reflects that at the time of filing his petition, the Petitioner's co-authored papers had garnered only 28 citations total, with a slight increase to 33 citations by the time of his response to SCOPS' Request for Evidence (RFE). While the Petitioner asserts that his citation record, nevertheless, places one of his articles in the top 10 percent of the most cited papers for engineering in the year 2024, the record lacks sufficient context and evidence to demonstrate his papers have, for instance, widely influenced the field or otherwise established a clear record of success. *Cf. Matter of Dhanasar*, 26 I&N Dec. at 891-92 (noting that the petitioner's education, experience, and expertise in his field, as well as the significance of his role in research projects, among other things, positioned him well to advance his proposed endeavor).

Moreover, while the Petitioner asserts he demonstrated interest by relevant parties in his work through project funding from the United States Department of Defense's Air Force Office of Scientific Research, the record does not reflect that he was the primary award recipient or principal investigator on these projects. The record lacks sufficient detail regarding the Petitioner's role or responsibilities or that his work or reputation were integral to securing these funds. While the Petitioner may have participated in the projects, without clear documentation of how his work or contributions impacted the funding process, it cannot be concluded that these awards are indicative of his capacity to independently advance significant research endeavors. By contrast, in *Dhanasar*, we noted that the petitioner had received "consistent" government funding of research projects in which he played a "significant" role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many of the grants. *Id.* at 892-93, n.11. Here, while the Petitioner's involvement in funded research may be considered favorable, the evidence does not indicate that the Petitioner is well positioned to independently secure funding or lead the advancement of his proposed endeavor.

Based on the record before us, the evidence does not appear to establish the Petitioner is well positioned to pursue the proposed endeavor. But, without a specific discussion of the evidence, it is unclear how SCOPS reached their favorable conclusion on this prong. Because a new first-line adjudication of *Dhanasar's* first and second prongs are required, SCOPS should also reevaluate whether the Petitioner meets the requirements of the third prong.

Accordingly, we withdraw SCOPS' decision and remand this matter for further consideration and entry of a new decision. On remand, SCOPS should review the entire record and determine whether the Petitioner has established eligibility under each of the three *Dhanasar* prongs. If SCOPS concludes that the Petitioner's evidence does not meet a specific eligibility requirement, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. SCOPS may request any additional evidence considered pertinent to the determination prior to issuing a new decision. In remanding, we express no opinion as to the ultimate resolution of the case.

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