U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36915448

Date: JUL. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an aquaculture consultant and researcher, 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).

SCOPS denied the petition, concluding that although the Petitioner is an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in our 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 SCOPS's decision and remand the matter for entry of a new decision.

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. In the case of an advanced degree professional, a "profession" is one 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 U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." *Id. Matter of Dhanasar,* 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates

[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).

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. at 889.

II. ANALYSIS

The Petitioner's proposed endeavor is described as follows: 1) be an aquaculture consultant and design projects and manage shrimp and fish farm operations for small businesses and producers in California; 2) conduct research in the field of aquaculture, and teach and share knowledge by creating training programs for farmers to promote environmental education, ensure quality control of shrimp and fish production chains with a focus on analyzing water, soil, and metal conditions for shrimp and fish cultivation. Through his research, the Petitioner also plans to facilitate the development of environmental education, contribute to teaching and creating projects related to technical and environmental issues, and develop environmental management and impact studies.

SCOPS determined the Petitioner is an advanced degree professional and therefore eligible for EB-2 classification. However, SCOPS also determined that the Petitioner did not establish any of the three prongs of the *Dhanasar* framework and therefore denied his petition. For the following reasons, we will withdraw SCOPS's decision and remand the matter for entry of a new decision.

A. EB-2 Classification

SCOPS determined the Petitioner is eligible for EB-2 classification. However, a petitioner seeking a national interest waiver as an advanced degree professional must show that the intended occupation through which they plan to advance their proposed endeavor meets the definition of a profession. *See generally*, USCIS Policy Alert PA-2025-03, Second Preference Eligibility for National Interest Waiver Petitions 7 (July 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (USCIS Policy Alert). As stated above, for the second preference classification, a profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[2]

Based on this requirement, not everyone who holds an advanced degree or its foreign equivalent necessarily qualifies for classification as a member of the professions holding an advanced degree because the occupation underlying the proposed endeavor must also require a bachelor's degree for entry into the occupation. *See Matter of Katigbak*, 14 I&N Dec 45, 46 (Reg'l Comm'r 1971) (holding that the degree or major must be academically appropriate to the profession for which petitioned). Further, "[a] professional occupation is determined by the general requirements to enter the intended

[2] The listed occupations are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries. *See* section 101(a)(32) of the Act.

occupation, and not by the credentials of any one person seeking to work in that field." *See* USCIS Policy Alert, *supra*, at 7. USCIS determines on a case-by-case basis, based on the evidence submitted, whether a petitioner's intended occupation is a professional occupation, and it is that petitioner's burden to establish, by a preponderance of the evidence, that the intended occupation requires at least a bachelor's degree or its foreign equivalent degree for entry. *Id.*

Here, the Petitioner indicated on the petition that his intended occupation was aquaculture consultant,[3] and he listed a Standard Occupational Classification code of 45-2093, corresponding to Farmworkers, Farm, Ranch, and Aquacultural Animals. According to the Occupational Information Network (O*NET), these occupations usually require a high school diploma. *See* Summary for Farmworkers, Farm, Ranch, and Aquacultural Animals, O*NET OnLine, https://www.onetonline.org/link/summary/45-2093.00 (last visited July 28, 2025, and added to the record). On remand, SCOPS should fully analyze whether the Petitioner has established his eligibility for EB- 2 classification as a member of the professions holding an advanced degree given that his stated intent to work as an aquaculture consultant does not appear to require at least a bachelor's degree or its foreign equivalent for entry.

B. First *Dhanasar* Prong: Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Id.* We agree with SCOPS's determination that the Petitioner's endeavor is of substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* An endeavor may have national importance because it has national or even global implications within a particular field, such as improved manufacturing processes. *Id.* Economically, it may have national importance if the endeavor has the significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *Id.* Moreover, if the record demonstrates that a proposed endeavor has the significant potential to, for example, contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. Regarding an endeavor in the fields of science, technology, engineering, or math—also known as STEM—importance may be found in its contribution to U.S. competitiveness or national security in a variety of circumstances, such as helping the United States remain ahead of strategic competitors or current and potential adversaries and contributing to our nation's achieving or maintaining technology leadership or peer status among allies and partners. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2).

In its analysis of national importance, SCOPS did not indicate whether the Petitioner's proposed endeavor would have a broader societal impact by contributing to critical and emerging technologies in a STEM field. While SCOPS mentioned the Petitioner's claim that the endeavor relates to a STEM

[3] The Petitioner also claims in the record that the proposed endeavor relates to the occupation of biologist, but that occupation was not listed on the petition.

field, SCOPS did not analyze *Dhanasar's* prong one according to the USCIS Policy Manual's STEM guidance. Additionally, as noted by the Petitioner on appeal, SCOPS incorrectly identified the Petitioner's work as benefiting the company [redacted] multiple times throughout its first prong analysis, which is incorrect. As a result, it is not clear that SCOPS's first prong analysis is based on the correct Petitioner or proposed endeavor. On remand, SCOPS should fully analyze the issue of national importance consistent with the foregoing analysis.

C. Second *Dhanasar* Prong: Well-Positioned to Advance the Proposed Endeavor

Under the second prong of the *Dhanasar* framework, the Petitioner must establish that he is well positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890. To determine whether he is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: his 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.* SCOPS determined that the Petitioner did not establish that he is well positioned to advance the proposed endeavor.

On appeal, the Petitioner asserts that SCOPS improperly "demanded a level of established success comparable to that required for an EB-1A classification."[4] We agree. SCOPS focused, in part, on the Petitioner's leading and critical role in his endeavor, as well as significant contributions to published research. As noted by the Petitioner on appeal, SCOPS appears to have conflated the EB-2 NIW requirements with EB-1 requirements for aliens of extraordinary ability. Further, SCOPS did not mention the applicable STEM field in its second prong analysis. USCIS considers an advanced degree, particularly a Doctor of Philosophy (Ph.D.) in a STEM field tied to the proposed endeavor[5] and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2). As such, on remand, SCOPS should fully analyze *Dhanasar's* second prong consistent with the foregoing analysis.

D. Third *Dhanasar* Prong: Waiving the Job Offer Requirement Would Benefit the United States

The third prong of *Dhanasar* 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. *See Matter of Dhanasar*, 26 I&N Dec. at 890. SCOPS noted that, in analyzing whether it would be beneficial to waive the requirements, USCIS may evaluate factors such as: whether, in light of the nature of the alien's qualifications or that of the proposed endeavor, it would be impractical either for the alien to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the alien's contributions; and whether the national interest in the alien's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken

[4] We note that the Petitioner also asserts that SCOPS improperly analyzed the Petitioner as an entrepreneur; he claims that he does not intend to open a business, that he is not an entrepreneur, and that the "mistaken assumption about entrepreneurial goals has resulted in the application of irrelevant criteria" to the petition.

[5] The Petitioner submitted a copy of his Ph.D. in Environment and Sustainability issued by a Brazilian university.

together, indicate 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 he meets *Dhanasar*'s third prong. On appeal, the Petitioner asserts he is eligible under the third prong of *Dhanasar* based on his "exceptional qualifications, the national importance of his proposed endeavor, and the potential for immediate and significant contributions to the U.S. aquaculture industry."

The USCIS Policy Manual outlines specific evidentiary considerations relating to STEM degrees and fields, including with respect to evaluating eligibility under the third *Dhanasar* prong. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2). When evaluating the third prong and whether the United States may benefit from an alien's entry, regardless of whether other U.S. workers are available, the USCIS Policy Manual instructs us to consider the following combination of facts contained in a record as a strong positive factor:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

Id.

The benefit to the United States is considered especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies. *Id.*

In making their determination with respect to the third *Dhanasar* prong, SCOPS's analysis did not sufficiently address the guidance provided by the USCIS Policy Manual with respect to those asserting eligibility with a proposed endeavor advancing a critical and emerging technology in a STEM field, namely, those factors we have discussed in the bullet points above. On remand, SCOPS should consider this guidance in their determination on the third *Dhanasar* prong.

III. CONCLUSION

For the foregoing reasons, we will withdraw SCOPS' decision and remand the matter for the entry of a new decision. SCOPS may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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