U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40652068

Date: JULY 29, 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 materials engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

USCIS denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either an advanced degree professional or an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner establishes 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." 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 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 alien is well positioned to advance their proposed endeavor; and

[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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. USCIS determined that the Petitioner had established the substantial merit of the proposed endeavor, but otherwise had not satisfied the various prongs of the *Dhanasar* national interest test.

The Petitioner earned a bachelor's degree in materials and metallurgical engineering in Nigeria in 2012. Also in Nigeria, the Petitioner worked in various aspects of the energy industry, including as an entrepreneur providing technical services to energy companies. The Petitioner entered the United States in August 2022 as the F-2 spouse of an F-1 nonimmigrant student. While in the United States, he attained his own F-1 status and earned a master's degree in business administration from the [redacted] in April 2024. Since August 2023, he has been studying for a master's degree in materials engineering at the [redacted], where he is also a graduate researcher at the [redacted] He filed the Form I-140 petition in December 2024.

The Petitioner described his proposed endeavor as follows:

> As a materials and metallurgical engineer, an asset integrity specialist, and energy business developer, my proposed endeavor is to develop a solar infrastructure corrosion rate database, innovative predictive models for soil corrosion in steel solar array pilings, and soil analysis hardware complementing the predictive model, enhancing the reliability of solar energy infrastructure through my company, [redacted]

The Petitioner explained that many solar power arrays are located in corrosive soils that can weaken and damage the support structures. The Petitioner stated that his "proposed endeavor will enable developers to make informed decisions and to lead to new materials science innovations for steel ground piling, coating, and prevention through predictive modelling of similar soil characteristics." Background materials show that corrosion of solar array support structures is a long-standing issue of concern in the industry.

A. Substantial Merit and National Importance

The first prong, 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

In determining national importance, the relevant question is not the importance of the industry or profession in which the alien will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In *Dhanasar*, we further noted that "we look for broader

implications" of the proposed endeavor and that "[a]n undertaking may have 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.

USCIS concluded that the Petitioner had established the substantial merit of the proposed endeavor, but not its national importance. We agree.

The denial notice focused partly on employment and economic impact. USCIS stated that the Petitioner's "business plan projects five (5) to sixteen (16) employees at the Foundation Phase estimating a total of forty-four (44) employees by Growth Phase." USCIS concluded: "The petitioner has not provided evidence that the area where the company intends to operate is economically depressed, or that the specific proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects."

On appeal, the Petitioner contends that his plan to hire 44 workers directly, while also creating additional indirect jobs, shows the potential impact of the proposed endeavor. But he does not establish that this level of job creation represents the "significant potential to employ U.S. workers" discussed in *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner also asserts that his proposed endeavor touches on important areas such as clean energy and artificial intelligence (AI). But the record does not show that his endeavor is directly involved in these areas. Rather, the endeavor would concern factors affecting the physical support structures of solar panels, and use machine learning for data analysis but would not, apparently, create more advanced AI technology.

The key issue regarding whether the proposed endeavor has national importance concerns solar power infrastructure. The record establishes that soil corrosion is a threat to the structural integrity of that infrastructure. But the Petitioner must establish the national importance not only of the problem, but also of the solution that he seeks to offer through his proposed endeavor. To establish the broader implications of the proposed endeavor, we must look beyond the problem it seeks to address to see how the endeavor would impact that problem.

Letters in the record, mostly from [redacted] faculty members, indicate that a comprehensive database of soil characteristics would provide useful information for mitigation efforts. But the record has considerably more information about the problem of soil corrosion than the impact the proposed endeavor would have on that problem.

The Petitioner asserted: "The innovations we develop have potential for wide-scale implementation across the U.S. solar industry." In response to a request for evidence (RFE), the Petitioner cited background materials indicating that "25 to 30% of annual corrosion costs in the U.S. could be saved if optimum corrosion management practices were employed." This figure presumes nationwide implementation of the Petitioner's proposed database.

But a business plan submitted with the petition does not show industry-wide implementation. The Petitioner's company would provide corrosion rate data to customers through a subscription service. The business plan indicated that reaching "5% of [the] market" would be an ambitious but achievable goal, and the "roadmap" in the business plan aimed for "300-350 active clients" late in the fifth year. An investment information memorandum in the record forecasts that the company would obtain 0.024% of the "Target Available Market" in its fifth year. It is not readily apparent how this figure is consistent with "wide-scale implementation across the U.S. solar industry." Because the Petitioner has not shown that his proposed endeavor would reach all U.S. solar providers, industry-wide statistics are not an appropriate benchmark for the potential impact of the endeavor.

After he received the RFE, the Petitioner contacted Professor [redacted] of [redacted] in Australia, who stated: "It is certainly very valuable to address solar infrastructure corrosion issues that are not present in general steel corrosion scenarios in other industries." But [redacted] cautioned: "I need to know how you will collect the required soil corrosion data for the proposed database. Soil corrosion behaviour changes with weather conditions and materials involved. This is a huge task and will affect the feasibility of your proposal." After receiving the Petitioner's response, [redacted] stated: "I think most of these approaches are practical, although I still expect challenges in acquiring data for various forms of localised corrosion listed in this presentation."

Ultimately, while the Petitioner's proposed endeavor seeks to address a problem that faces the entire solar energy industry, he has not shown the broader implications and impact necessary to establish the national importance of the endeavor.

USCIS concluded that the Petitioner had not established any government interest in the proposed endeavor, and raised concerns about available funding. These are issues better suited to the second *Dhanasar* prong, concerning whether the Petitioner is well positioned to advance the proposed endeavor. We will address these issues further below in the appropriate context.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the alien. To determine whether an alien is 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

While USCIS denied the petition solely on first prong issues, our de novo review of the record gives us the discretion to examine additional issues. For the reasons below, we conclude that the Petitioner has not established that he meets the second *Dhanasar* prong.

The Petitioner stated: "I will employ my expertise in advanced materials science, metallurgical engineering, asset integrity, and successful experience in developing oil and renewable energy businesses in emerging economies to advance my endeavor."

The record shows that the Petitioner is trained as a materials engineer, has worked as an engineer in several different facets of the energy industry, and has experience running a business. The Petitioner has also documented activities with various professional associations. But the record does not indicate that the Petitioner has substantial experience in an occupation or activity that closely resembles the proposed endeavor. Rather, the Petitioner's list of his own "key achievements" includes "a roadmap to achieve a $2.5M target for lithium-ion storage product business development"; "assessment and negotiations resulting in $20,000 average savings per site for inner-city bus terminals"; and "long-term contracts with major oil and maritime companies in Nigeria and the US." Some of the Petitioner's work has involved solar energy, and some has addressed corrosion, but it does not appear to have closely mirrored activities central to the proposed endeavor, including compiling a database from disparate sources and designing hardware and software for corrosion mitigation.

The activities the Petitioner has undertaken in furtherance of his ongoing master's degree studies at [redacted] likewise do not appear to bear directly on the proposed endeavor. A research statement in the record indicates that the Petitioner's thesis research involves materials used in batteries.

This lack of direct experience is not decisive on its own; it is only one factor to consider. But the record does not otherwise show that the Petitioner is well positioned to advance the proposed endeavor.

The record shows that the Petitioner registered [redacted] in Delaware in [redacted] 2022, but it shows no further concrete progress toward achieving the proposed endeavor.

The company's business plan includes several present-tense references that imply the company is already in operation. For instance, the plan reads: "Our team of experienced researchers and industry experts positions us at the forefront of" "the corrosion prediction and mitigation market," and asserts: "By maintaining a robust R&D [research and development] program, [redacted] ensures that we remain at the forefront of soil corrosion prediction technology." The plan does not identify members of the "team" or establish that the R&D program is already underway, such that the company is already "at the forefront" of its field.

Likewise, the plan claims [redacted] is led by a team of experienced professionals with diverse backgrounds in materials science, environmental engineering, data analytics, and solar industry operations," but the "Key Team Members" section that follows identifies only the Petitioner by name. An investment memorandum in the record lists goals such as "Establish R&D team" and "Hire Initial Team Members" as "Not Started." There is no evidence that [redacted] had any employees or operational capacity at the time the Petitioner filed the petition in December 2024. A staffing plan submitted in response to the RFE specifies the qualifications for positions with the Petitioner's company, but does not indicate that the company has hired anyone yet. If the team is not yet in place, then it is premature to attest to hypothetical team members' experience and backgrounds.

The business plan also states that the Petitioner's company "offers a comprehensive suite of research-based products and services . . . designed to address specific market needs," such as "SolarSoil Analyzer Software," an "Advanced Solar Soil Corrosion Analytics Suite," and the [redacted] Soil Resistivity Meter." Although the business plan refers to these products in the present tense and discusses specific features, such as the "[n]ano-engineered formula" and "[s]elf-healing properties" of SolarShield Protective Coating," the record does not show that these products already existed at the

time of filing. Rather, the investment memorandum indicates that the company has yet to "[b]egin development of SolarSoil Analyzer software" and "[b]egin development of prototype Advanced Soil Corrosion Prediction Model." The proposed endeavor hinges on these tools being developed at some point in the future. An intention to invent them is not strong evidence that the Petitioner is well positioned to advance that endeavor.

The distinction between the existence of key software and hardware tools and the intention to develop or invent them at a later time is a critical one, because the intention does not establish that the Petitioner would be able to develop them as he plans, particularly when his past experience is only indirectly relevant to the proposed endeavor. As noted previously, [redacted] anticipated "challenges in acquiring data for various forms of localised corrosion" even after the Petitioner answered [redacted] follow-up questions. Such concerns show that there may be issues and obstacles beyond what the Petitioner has planned and anticipated.

The business plan refers to "Academic Partnerships," "Industry Collaborations," and "Government and Non-Profit Partnerships." There is no evidence that these partnerships and collaborations already exist, and the plan does not identify any specific partner entities. Instead, the wording of this section of the plan suggests that the Petitioner intends to pursue these avenues at a later time.

Much of the evidence that the Petitioner cites as evidence to show he is well positioned to advance the proposed endeavor concerns developments that occurred after the petition's December 2024 filing date, and after USCIS issued the RFE in February 2025. For example, in April 2025 he was invited to join a summer cohort of the [redacted] program. Potential investors executed pledge agreements in April and May 2025.

The timing of these materials is significant because a petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). To whatever extent these activities in April and May of 2025 may have added to the Petitioner's ability to pursue the proposed endeavor, these factors were not yet in play in December 2024 when he filed the petition.

In the RFE, USCIS noted that, according to the business plan, [redacted] is seeking $8.6 million in initial funding." In response to the RFE, the Petitioner claimed: "To get my proposed endeavor to achieve the [minimum viable product] milestone, I need less than $500,000 in funding." The Petitioner asserted that the "second financing round" would occur during the fourth of four development phases. The Petitioner submitted letters pledging $875,000 to his proposed endeavor, slightly more than one-tenth of the "initial funding" figure of $8.6 million.

As noted above, the Petitioner obtained the pledge letters in April and May 2025, several months after the December 2024 filing date. Even then, the Petitioner has not correctly described the pledge agreements. The Petitioner calls the pledge agreements "formal commitments" showing that "[t]hese investors have demonstrated their firm interest to invest in the proposed endeavor." But the documents themselves state that "[t]he undersigned hereby expresses a soft interest to invest," and that "nothing herein shall commit the undersigned to invest in the Offering."

Because the proposed endeavor involves a database of soil corrosion data, the collection of that data is a major element of the endeavor. The Petitioner's initial submission included essentially identical

form letters attributed to three solar energy suppliers. Each letter includes the following passage: "Should [redacted] be granted funding by the Department of Energy or other third-party funding sources for the Proposed Project, [the company] will use commercially reasonable efforts to formalize arrangement with [redacted] towards granting access to one or more of its project sites for data collection purposes." The companies did not offer funding of their own or guarantee that the Petitioner's company would in fact have access to their project sites.

As with the pledge letters discussed above, the letters from the energy suppliers express only tentative interest in possible future cooperation. As such, the letters are not strong evidence that the Petitioner was well positioned to advance the proposed endeavor when he filed the petition.

In the denial notice, USCIS noted that "the letters specifically state that their interests in working with petitioner depends upon whether or not the [Petitioner] can obtain funding from the Department of Energy." The Petitioner observes on appeal that these letters are not from prospective investors, as stated in the denial. But the point remains that their cooperation is contingent on receipt of outside funding, and the wording of the letters emphasizes the tentative nature of the agreements.

For the above reasons, we conclude that the Petitioner has not shown that he was well positioned to advance the proposed endeavor when he filed the petition.

In light of the above conclusions, the Petitioner has not met his burden of proof to show (1) the national importance of the proposed endeavor and (2) that he is well positioned to advance the proposed endeavor. Detailed discussion of the remaining, third *Dhanasar* prong cannot change the outcome of this appeal. Because the Petitioner has not otherwise established eligibility for the classification sought, we need not reach, and therefore reserve, the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

We will dismiss the appeal because we agree with USCIS that the Petitioner has not established the national importance of the proposed endeavor. We further conclude that the Petitioner has not satisfied the second *Dhanasar* prong. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

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.