U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38774524

Date: JUNE 13, 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

SCOPS denied the petition. SCOPS determined that the Petitioner qualifies as a member of the professions holding an advanced degree. However, SCOPS concluded that the record does not establish that a waiver of the job offer requirement, and thus of a 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 dismiss the appeal.

I. LAW

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:

- The proposed endeavor has both substantial merit and national importance;

[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 individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

SCOPS found that the Petitioner qualifies as a member of the professions holding an advanced degree. However, for the reasons discussed below, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See id.*

The Petitioner described the endeavor as a "plan to design and implement novel software, tools, infrastructure and mechanisms that enhance network security in a distributed, cloud computing setting." He added that his "intention is to develop software that can be used by anyone who needs to connect to remote hosts in the cloud, including companies, research institutions and governmental organizations around the world." The Petitioner summarized his qualifications and work experience at [redacted], where he indicates he would pursue his endeavor. He also submitted publications and opinion letters that provide generalized information regarding computer science.

SCOPS acknowledged the Petitioner's description of the proposed endeavor, and "determined that [the Petitioner's] proposed endeavor has substantial merit," as required in part by the first *Dhanasar* prong. *See id.* However, SCOPS observed that, beyond describing the Petitioner's work at [redacted] the record does not establish that the proposed endeavor would have national importance, as also required in part by the first *Dhanasar* prong. *See id.* SCOPS further concluded that the record does not satisfy the second and third *Dhanasar* prongs. *See id.*

Because we determine that the record does not establish whether the proposed endeavor may have national importance, which is dispositive, we reserve our opinion regarding whether the proposed endeavor has substantial merit, as required in part by the first *Dhanasar* prong, and whether the record satisfies the second and third *Dhanasar* prongs. *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

On appeal, the Petitioner reiterates that his "proposed endeavor . . . is to improve network and communication security by creating new software, tools, and systems that make networks safer in distributed and cloud computing environments." He also repeats statements he made in response to SCOPS' request for evidence, providing two examples of software he intends to develop, including an "AI-powered SSH protocol with real-time threat detection and risk assessment" and an "automated access auditing and privilege management system," which he described further in the record. In that RFE response statement, the Petitioner added that, for the first project, "I may hire additional engineers to assist me with this project, as well as other employees focusing on the business side, who will pitch this idea to corporations and organizations." For the latter project, the Petitioner similarly stated, "I may hire a team of 20-30 consisting of software engineers, cybersecurity experts, UI/UX designers, compliance specialists and project and operations managers to assist me with this project, and will pitch this idea to corporations and organizations," which, in turn, "will need to further hire 15-20

software engineers, DevOps engineers, compliance specialists and program managers to maintain this system." The Petitioner again references on appeal publications and opinion letters in the record that provide generalized information regarding computer science.

In determining national importance under the first *Dhanasar* prong, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [individual] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

We first note that the publications providing generalized information regarding computer science do not discuss the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor may have national importance. For example, they do not address how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the field of computer science, or any other field, such as those resulting from certain improved manufacturing processes. *See id.* As another example, they do not discuss how the specific endeavor the Petitioner proposes to undertake may have significant potential to employ U.S. workers or have other substantial positive economic effects. *See id.* Instead, the articles, with titles such as "What is Cloud Computing?," "Foreign-born STEM Workers in the United States," "Wanted: 4 Million Cybersecurity Experts," and "How Cybersecurity Boosts Enterprise Reinvention to Drive Business Resilience: State of Cybersecurity Resilience 2023," pertain to the importance of the industry, field, or profession in which the Petitioner proposes to work, which is not the relevant question in assessing whether the specific endeavor an individual proposes to undertake may have national importance. *See id.* Because the publications in the record, referenced by the Petitioner on appeal, that provide generalized information regarding computer science do not discuss the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor may have national importance, we need not address them further.

The opinion letters the Petitioner references on appeal similarly are of little probative value. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

The opinion letters summarize generalized information regarding computer science and they provide conclusory statements, such as "[t]he national significance and value of [the Petitioner's] proposed

endeavor are particularly evident in industries such as finance and entertainment, where secure and reliable systems are paramount," and "[the Petitioner's] proposed endeavor holds critical national significance, particularly in the technology and government sectors." They also provide conclusory statements regarding the importance of the Petitioner's prior projects within his employer's organization, rather than the projects' broader importance. However, the opinion letters do not discuss evidence in the record regarding the Petitioner's prospective projects and assist us in understanding that evidence, which is the purpose of an opinion letter, rather than purporting to be evidence of fact themselves. *See Matter of V-K-*, 24 I&N Dec. at 502 n.2. For example, although one opinion letter generally references "IBM's 2023 report" regarding "the average cost of a data breach," the publication in the record titled "IBM Report: Cost of a Data Breach Hits Record During Pandemic" is dated 2021 and, therefore, apparently not the publication to which the opinion letter refers. Moreover, as noted above, the underlying evidence in the record does not establish how the proposed endeavor may have national importance, given that it also consists of publications providing generalized information regarding computer science instead of information about the specific endeavor the Petitioner proposes to undertake, even if the opinion letters addressed such evidence. Because the opinion letters do not discuss evidence in the record and assist us in understanding how that evidence may establish the proposed endeavor may have national importance, and more generally because they consist of broad and conclusory statements without substantiation, they bear minimal probative value, and we need not address them further. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795; *see also Matter of V-K-*, 24 I&N Dec. at 502 n.2.

Turning to the Petitioner's summaries of particular software projects he proposes to develop, we note that he purported to have hiring authority while working as a software development engineer for [redacted] More specifically, he stated, "I may hire additional engineers to assist me with this project, as well as other employees focusing on the business side" and "I may hire a team of 20-30 consisting of software engineers, cybersecurity experts, UI/UX designers, compliance specialists and project and operations managers to assist me with this project." The record does not establish that, as a software development engineer, the Petitioner would have the authority to hire "20-30" new [redacted] employees. On the contrary, the Petitioner's supervisor at [redacted] a software development manager, who wrote one of the opinion letters noted above, has the apparent authority to hire new [redacted], employees. The Petitioner's repeated suggestions that he personally "may hire additional engineers" and that he personally "may hire a team of 20-30" new employees, without the apparent—or actual—authority to do so, appears to overstate his role in the company, and it casts doubt on the reliability and sufficiency of both his statements and the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

Moreover, even to the extent that the Petitioner may have the authority to "hire a team of 20-30" new employees, the record does not establish relevant details such as where those hypothetical employees would work, the duties they would perform, and the wages they would be paid, nor does it establish how hiring those numbers of workers with those general occupations and unstated duties in the unspecified location(s) would be significant in context, in order to meaningfully assess whether that may constitute significant potential to employ U.S. workers or have substantial positive economic effects. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

In determining whether an endeavor implicating science, technology, engineering, and mathematics (STEM) fields may have national importance, as in all cases, the record must establish that the specific proposed endeavor—rather than the industry, field, or profession in which a petitioner may work in general—has national importance, as provided in *Dhanasar*, such as by broadly impacting the relevant STEM field. *See generally* 6 USCIS *Policy Manual* F.5(D)(1)-(2), https://www.uscis.gov/policy-manual. Neither the Petitioner's personal statements nor the remainder of the record provide probative, objective information regarding how the specific endeavor the Petitioner proposes to undertake may have national or even global implications within the field of computer science or any other particular field, such as those resulting from certain improved manufacturing processes or medical advances, or substantial positive economic effects. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. Rather, the proposed endeavor to develop software appears to be similar to software development projects conducted by other, typical software developers, and the record does not establish that the benefits of the Petitioner's proposed software would extend beyond his employer and its business partners, clients, and customers, consistent with national importance, as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.