U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 38331053

Date: JUN. 26, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification of the Beneficiary 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 established that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, the Petitioner had not established 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.

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' decision and remand the matter for entry of a new decision.

## I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must demonstrate that a beneficiary is 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 the beneficiary's 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.[2]

## II. ANALYSIS

SCOPS determined that the Beneficiary qualifies as a member of the professions holding an advanced degree. The record supports that determination. The 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. For the reasons discussed below, we will remand this matter for the entry of a new decision consistent with the following analysis.

### A. The Proposed Endeavor

At the time of filing, the Beneficiary was employed as a software developer specializing in automotive safety engineering for advanced driver assist systems (ADAS) with [redacted]. The record contains statements from the Beneficiary describing his intention to continue his work in the field of automotive safety engineering in the United States. In response to a request for evidence (RFE), a cover letter provided the following description of his proposed endeavor:

> [The Beneficiary's] proposed endeavor is to advance the development, calibration, testing, and validation of [ADAS] and automated driving technologies, with a particular focus on collision avoidance systems such as automatic emergency braking, cross traffic alert, and side blind zone detection.

The Beneficiary also provided the following in his personal statement:

> In my current role at [redacted] my future goals include advancing the use of simulation and automation tools to validate automated driving vehicle safety features. This will help reduce the development effort and allow us to release software to vehicles more quickly. I plan to utilize software development and artificial intelligence (AI) platforms to automate some of the calibration and validation work we do, enhancing efficiency and accuracy. Additionally, I aim to improve robotic vehicle testing to achieve faster and more consistent testing results. These advancements will position me to contribute significantly to the development of cutting-edge automated driving technologies.
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> Technically, I am focused on integrating advanced AI and machine learning algorithms into our validation processes, which will streamline and enhance the accuracy of our testing methods. By automating calibration and validation tasks, we can reduce human error and increase the speed at which new features are brought to market. Improved

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

[3] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

robotic vehicle testing will provide more reliable and repeatable results, ensuring that our safety features are thoroughly vetted before deployment.

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. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. SCOPS determined the Petitioner submitted sufficient evidence to establish that the Beneficiary's proposed endeavor had substantial merit. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. An endeavor may have national importance because it has national or even global implications within a particular field, such as improved manufacturing processes. *Id*. If the evidence of record demonstrates that an individual's 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.[4] 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 security in a variety of circumstances, such as when it will help the United States remain ahead of strategic competitors or current and potential adversaries.[5]

SCOPS determined that the Petitioner did not establish the national importance of the Beneficiary's proposed endeavor under *Dhanasar*'s first prong. However—and without analysis of the endeavor as described in the record—SCOPS' decision states, "Simply intending to work in the software engineering field does not constitute an endeavor." And while review of the record indicates that the RFE response provided additional details to clarify the Beneficiary's intended activities concerning the proposed endeavor, the decision refers to the description as "edited," stating, "You have not explained any details about his new endeavor."

SCOPS also appears to have conflated the second prong of the *Dhanasar* framework with the first prong in discussing the proposed endeavor's national importance. Specifically, in discussing the first prong, the decision states that the Petitioner "did not provide evidence that the work that [the Beneficiary] has done as a senior controller integration engineer at [redacted] is nationally important to the United States." As stated, the first prong focuses on the substantial merit and national importance of the proposed endeavor itself, rather than any impact that the endeavor may have already had on the field or an individual's standing within the field; it is the second prong of *Dhanasar* that focuses on the Beneficiary and whether he is well-positioned to advance the endeavor.

In addition, SCOPS did not indicate whether the Beneficiary's proposed endeavor would prospectively have a broader societal impact by contributing to critical and emerging technologies in a STEM field. Specifically, SCOPS did not discuss whether the proposed endeavor would help the United States stay ahead of strategic competitors and potential adversaries and contribute to our nation achieving or

[4] *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[5] *Id.*

maintaining technology leadership or peer status among allies and partners. For these reasons, SCOPS' determination as to national importance is hereby withdrawn. On remand, SCOPS should analyze the issue of national importance consistent with the foregoing analysis.

C. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. 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. *Dhanasar* at 890.

SCOPS determined that the Petitioner did not establish that the Beneficiary is well positioned to advance the proposed endeavor. However, SCOPS did not address documentation in the record describing factors such as the Beneficiary's education, skills, knowledge, and future plans—including information relating to his STEM field—in order to evaluate the Beneficiary's eligibility under the second *Dhanasar* prong, but instead concluded that the record did not contain evidence of the Beneficiary's "record of success" or "substantial influence in the field." While SCOPS' decision lists documentation in the record—including letters of endorsement, published material, and industry articles—it does not analyze any of the documentation cited in relation to the description of the proposed endeavor or the Beneficiary's positioning to advance the endeavor, stating to the Petitioner, "You did not describe his proposed endeavor." For these reasons, SCOPS' determination as to whether the Beneficiary is well positioned to advance the proposed endeavor is hereby withdrawn. On remand, SCOPS should analyze the issue of the Beneficiary's positioning to advance his proposed endeavor consistent with the foregoing analysis.

D. Whether on Balance a Waiver is Beneficial

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. *Id.* at 890. SCOPS determined that the Petitioner did not establish that the Beneficiary meets *Dhanasar*'s third prong. 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 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.

The Petitioner asserts the Beneficiary is eligible under the third prong of *Dhanasar* and indicates that his proposed endeavor is focused on a critical and emerging technology in a STEM field. The USCIS Policy Manual outlines specific evidentiary considerations relating to STEM degrees and fields, including with respect to evaluating eligibility under the third prong. When evaluating the third prong

and whether the United States may benefit from a person's entry, regardless of whether other U.S. workers are available, the USCIS Policy Manual instructs USCIS 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.

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.[6]

SCOPS did not provide any analysis of the evidence concerning whether the record established eligibility under the third prong of the *Dhanasar* framework. The decision states the following:

> You offered no evidence that the national interest in your beneficiary's contributions is sufficiently urgent to warrant forgoing the labor certification process or that the proposed endeavor may lead to potential creation of jobs. Accordingly, the evidence does not satisfy the requirements of this prong.

SCOPS did not sufficiently address guidance specifically provided by the USCIS Policy Manual regarding endeavors in STEM fields. SCOPS did not discuss the factors listed above concerning the Beneficiary's education and positioning to advance his proposed endeavor in a STEM field, nor did SCOPS address whether the Beneficiary would be engaged in advancing a critical and emerging technology of competitive importance to United States. On remand, SCOPS should consider this guidance in determining the Beneficiary's eligibility under the third prong of *Dhanasar*.

## III. CONCLUSION

We will remand the matter to SCOPS 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' decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[6] *See generally* 6 *USCIS Policy Manual, supra,* at F.5(D)(2).