U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39584244

Date: JUNE 29, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a mechanical engineer and project manager, 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 the Petitioner did not establish that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The matter is now before us on appeal. 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 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.

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." 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. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016), provides the framework

for adjudicating national interest waiver petitions. *Dhanasar* states 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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

SCOPS found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] We agree. The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. SCOPS determined that while the Petitioner demonstrated the proposed endeavor has substantial merit and that he was well-positioned to advance his proposed endeavor, he did not establish that the proposed endeavor is of national importance and that it would be beneficial to the United States to waive the requirements of job offer and labor certification as required by the first and third prongs of the *Dhanasar* analytical framework. Upon de novo review, we agree with SCOPS' determination that the Petitioner did not establish the national importance of his proposed endeavor.[3]

As a preliminary matter, it is important to note that the Petitioner, in the original petition, stated that his proposed endeavor was to continue his "pioneering" work as an engineering and project manager focusing on critical infrastructures and facilities within the energy sector, especially the oil and gas industry. He intends to work on projects replacing aging oil and gas pipelines and replace aging oil and gas storage tanks with modern ones. He claims that modernizing these critical infrastructures will increase the quantity of oil and gas being produced and significantly reduce production cost because of higher efficiency because leakages and accidents will be prevented and safety will be prioritized. However, in response to SCOPS' request for evidence (RFE), the Petitioner shifted his plans, stating that after a few years working on advancing the oil and gas infrastructure, he will start his own consulting company to advise and support companies and project managers involved in modernization projects which will cause a "ripple effect" of his endeavor resulting in job opportunities, economic growth, and prosperity for the people of the United States.

The Petitioner's initial description of his proposed endeavor did not include plans to open and operate a consulting business. It was only upon the issuance of the RFE that the Petitioner, for the first time, presented his proposed endeavor to establish a business to offer consulting services. This shift introduced a new business model not previously described in the petition and significantly changed the nature of the proposed endeavor. The Petitioner did not initially submit a business plan or implementation plans/timeline to support a plan to open a consulting firm. The absence of a clearly

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] To qualify for the underlying EB-2 classification as an advanced degree professional, the Petitioner submitted his diploma and academic transcript indicating he earned a master's degree in project management from the [redacted] in December 2015.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

defined proposed endeavor prevents us from meaningfully assessing the endeavor's significance under the *Dhanasar* framework. Moreover, a fundamental change in the nature of an endeavor constitutes an impermissible material change.

We observe that SCOPS correctly articulated the Petitioner's initial proposed endeavor in its decision, not the revised endeavor. However, on appeal, the Petitioner asserts that SCOPS overlooked that, in response to the RFE, he stated that he will start his own consulting company. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Here, the Petitioner's new proposed endeavor in the RFE response describes a new set of facts regarding the proposed endeavor. The Petitioner's proposed endeavor to open and operate his consulting firm was presented after the filing date and cannot retroactively establish eligibility. As the *Dhanasar* framework requires an analysis of the proposed endeavor's substantial merit and national importance, such a change is material to his eligibility for a national interest waiver. Accordingly, we conclude that the Petitioner made an impermissible material change to his proposed endeavor.. *Id.* As such, SCOPS did not err in considering only the Petitioner's initial proposed endeavor. Moreover, we will only consider the Petitioner's original proposed endeavor to continue working as an engineering and project manager focusing on critical infrastructures and facilities within the energy sector, especially the oil and gas industry.

On appeal, the Petitioner contends that SCOPS' decision was based on erroneous conclusions of law and fact. In particular, he asserts that SCOPS disregarded evidence in the record pertaining to government funding supporting modernization of oil and gas infrastructure ($200 million for five years), negative incidents such as explosions, fires and gas and oil leaks, revenue from the oil and gas industry, and cyber-vulnerability of the aging oil and gas infrastructure. We agree with SCOPS that though the Petitioner has demonstrated the proposed endeavor's substantial merit, he has not demonstrated that his proposed endeavor rises to the level of 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.* The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the [petitioner] proposes to undertake." *See Dhanasar*, 26 I&N Dec. 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.

On appeal, the Petitioner argues that because documentation in the record states that the U.S. government plans to invest $200 million to modernize infrastructure and because old infrastructure carries serious risks of danger and leakage, he has met his burden to demonstrate his proposed endeavor is of national importance. However, upon de novo review, the Petitioner has not established that he has been awarded funding and he does not have a business plan for his proposed endeavor showing that it will have a national or regional economic impact. Moreover, he has not shown that any work he does will extend beyond his clients and rise to the level of national importance. For example, he has not shown that he employs a novel approach to replacing infrastructure that will change how the industry operates on a national or regional level. His petition is based on speculation and does not contain a business plan. While we acknowledge the Petitioner's extensive experience and accomplishments as a mechanical engineer and project manager, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his specific proposed endeavor will rise to the level of national importance.

Moreover, although an individual's experience, qualifications, contributions, and achievements are material, these experiences are misplaced in the context of the first *Dhanasar* prong. The Petitioner's professional experience is generally material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar*'s first prong. We agree with SCOPS that the Petitioner has not shown that the specific endeavor he proposes to undertake stands to sufficiently extend beyond his clients, partners, employers, or companies he elects to work with to offer substantial economic effects for the United States or enhance societal welfare on a broader scale indicative of national importance.

While the Petitioner's field of focus—modernizing oil and gas infrastructure—may generally align with nationally recognized priorities, the record does not establish how the Petitioner's specific proposed endeavor will have broader implications in his field, positively impact the U.S. economy, or generate direct and indirect jobs on a broad scale rising to the level of national importance. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See id.* at 890.

On appeal, the Petitioner offers new evidence purporting to demonstrate that his proposed endeavor has national importance: a 2021 article in the journal Geohealth entitled, "*Natural Gas Gathering and Transmission Pipelines and Social Vulnerability*," and a 2024 article in iScience entitled, "*The economic consequences of local gas leaks with evidence from Massachusetts housing market.*" We will not consider new evidence for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (2024) (declining to consider new evidence on appeal when the filing party was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial); *see also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

For the aforementioned reasons, the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third prong outlined in *Dhanasar*. *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

The Petitioner has not shown that he is eligible for and otherwise merits a national interest waiver of that classification's job offer requirement.

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.