U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37911107

Date: MAY 07, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks to permanently employ the Beneficiary in the position of Senior Analyst, Product Analytics. It requests her classification under the 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).

Service Center Operations (SCOPS) denied the petition, concluding that although the Beneficiary qualifies for EB-2 classification as an advanced degree professional, the Petitioner did not establish 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 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying EB-2 visa classification as either a member of the professions holding an advanced degree or as an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates the beneficiary's 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, 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:

[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 proposed endeavor has both substantial merit and national importance;
- The alien 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 denied the petition, concluding that although the Beneficiary is eligible for EB-2 classification as an advanced degree professional, the Petitioner did not establish that a waiver of the labor certification and job offer requirement is in the national interest because they did not establish eligibility under any of the three prongs outlined in Matter of Dhanasar. On appeal, the Petitioner contests SCOPS's determination and asserts eligibility under all three of the Dhanasar prongs.

The record supports SCOPS's determination that the Beneficiary qualifies for EB-2 classification as a member of the professions holding an advanced degree. As such, the only remaining issue is whether the Petitioner has established the Beneficiary's eligibility for a discretionary waiver of the labor certification and job offer requirement under the Dhanasar framework.

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Matter of Dhanasar, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. Id.

The Petitioner, [redacted] a leading provider of video game and streaming entertainment platforms, states that the Beneficiary's proposed endeavor will involve her continued full time and permanent employment as a Senior Analyst, Product Analytics. On appeal, the Petitioner describes the proposed work as follows:

> [T]o use artificial intelligence and machine learning in [redacted] product development processes by executing advanced analytics initiatives for product feature prioritization, user design, and navigational analytics, and product key performance indicator (KPI) measurements. More specifically, the Beneficiary's endeavor is to leverage artificial intelligence algorithms and machine learning models to optimize the gameplay experience for players, analyze player behavior within the game, and unravel patterns, preferences, and trends that will enable [redacted] to implement product feature design changes that meet player expectations, which in turn will further U.S. technological capabilities and sustain the U.S. and global economy.

In addressing the substantial merit of the proposed endeavor, SCOPS determined that the Beneficiary's endeavor to use artificial intelligence and machine learning to execute advanced analytics initiatives for [redacted] product design and development process as a Senior Analyst, Product Analytics had substantial merit. Upon de novo review of the record, we conclude the Petitioner has demonstrated by a preponderance of the evidence that the Beneficiary's proposed endeavor has substantial merit in the areas of business and technology.

SCOPS addressed the evidence submitted to establish the national importance of the proposed endeavor, which included letters from the Petitioner and counsel, letters of recommendation, expert opinion letters, articles, paystubs, and the Beneficiary's immigration documents, among others.[2] The Petitioner asserted that the Beneficiary's work had the potential to "directly translate into several billions of dollars in revenue for [redacted] which in turn will positively impact the U.S. economy, afford the United States the ability to compete as a leader in the gaming industry, and maintain its reputation as an enduring household name." However, after considering the evidence, SCOPS determined the record did not establish the national importance of the Beneficiary's proposed endeavor as it did not show how it would sufficiently extend beyond the Petitioner and its customers such that it would impact the field more broadly. Accordingly, SCOPS concluded the Petitioner did not demonstrate the proposed endeavor would have impacts on the U.S. economy, the Petitioner's industry, societal welfare, or other U.S. interests at a level commensurate with national importance.

On appeal, the Petitioner asserts SCOPS misapplied the legal standard of review and disregarded probative evidence demonstrating eligibility under the Dhanasar framework. The Petitioner asserts that SCOPS ignored essential information contextualizing the nature and importance of the Beneficiary's proposed endeavor, which resulted in SCOPS improperly disregarding essential evidence widely recognized as probative in the Beneficiary's field of expertise.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that its claim is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we conclude the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary's proposed endeavor has national importance as contemplated under the Dhanasar framework.

In Dhanasar, we concluded that in determining national importance, the relevant question is not the importance of the field, industry or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the alien proposed to undertake." 26 I&N Dec. at 889. We therefore "look for broader implications" of the proposed endeavor. In this regard, we observed that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. Thus, the issue is not whether AI and machine learning technologies, or the gaming and digital entertainment industries are areas of national importance. Rather, the Petitioner must

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

demonstrate the national importance of the specific proposed endeavor, which involves the Beneficiary's continued work for the Petitioner in the position of Senior Analyst, Product Analytics.

As noted by the Petitioner, USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially if focused on critical and emerging technologies, or other STEM areas important to U.S. competitiveness or national security. See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual. Some proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests but may also have sufficiently broad potential implications to demonstrate national importance. Id. Therefore, we acknowledge the value of machine learning technologies and AI that the Beneficiary uses to enhance the safety and security of the Petitioner's gaming platform, facilitating analytics of consumer behavior and experience, and streaming services. The Petitioner alleges that there is a lack of qualified STEM workers in these specific fields, and it asserts that the Beneficiary's endeavor will continue to help advance the U.S. interest in attracting and retaining STEM workers. However merely working in a STEM field, or in an occupation in which there is a national shortage of workers, is insufficient to establish the national importance of the proposed endeavor. While the Petitioner submitted articles intending to bolster the substantial merit of the Beneficiary's field of expertise, this evidence does not sufficiently demonstrate how the Beneficiary's employment with the Petitioner would have the broader impacts required to show the proposed endeavor's national importance.

Similarly, the Petitioner cannot meet its burden to demonstrate the national importance of the proposed endeavor by relying on its own prominence and reputation in its field. The Petitioner placed considerable emphasis on its standing within the digital entertainment industry where it contributes several billion dollars in revenue annually to the U.S. economy. Specifically, according to [redacted] Vice President of [redacted] in 2023, [redacted] company in the world with a gaming revenue of $28.2 billion. In Dhanasar, we highlighted that while the field of STEM education may be of national importance, the duties of a STEM teacher in a classroom would not necessarily be of national importance because the impact that would flow from the teacher's activities would not sufficiently extend beyond the students sitting in their classroom. See 26 I&N Dec. at 893 (stating "[w]hile STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly.") Likewise, here, the record does not establish that the Beneficiary's duties as a Senior Analyst, Product Analytics would impact the gaming or digital entertainment industry more broadly, beyond the Petitioner and its customers. Id.

We acknowledge [redacted] descriptions of the Beneficiary's skills including her significant contribution to innovation within [redacted] through her participation in [redacted]. We further acknowledge her projects [redacted] and [redacted] which won first place in 2023 and 2022 respectively. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under Dhanasar's first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how her role as Senior Analyst, Product Analytics largely influences the field and rises to the level of national importance. In Dhanasar, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. The record does not show through supporting documentation how the Beneficiary's endeavor sufficiently extends beyond her prospective employers or clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not demonstrate how the Beneficiary's Senior Analyst, Product Analytics position has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner states as follows:

> The national importance of [the Beneficiary's] work with respect to machine learning-based analytics for product and product feature prioritization particularly within the video gaming industry, is well established. AI and ML-based data science and analytics play a pivotal role in the video gaming industry, ushering in a new era of innovation and user experience enhancement. Through sophisticated models and algorithms, machine learning enables game developers to analyze vast datasets regarding gameplay features, gameplay time, session volume, and other important metrics to gain insights into player behavior, preferences, and engagement patterns. This, in turn, facilitates the creation of personalized gaming experiences, tailored to individual players, as well as the prioritization of product development efforts based on what products and features are most popular based on the data. Moreover, ML contributes to dynamic content generation, adapting in-game elements based on real-time player interactions. In the broader technology sector, advancements in ML-driven data science within gaming have far-reaching implications. The interactive nature of gaming technology fosters rapid development cycles, pushing boundaries of ML and AI capabilities.

However, the Petitioner did not include specific, detailed information projecting employment figures, goods produced, or revenue generated directly credited from her Senior Analyst, Product Analytics position. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that any benefits to the U.S. regional or national economy resulting from her services would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

The Petitioner opines that the labor certification process is prohibitive for the Beneficiary because of the importance of her endeavor, and especially because the Department of Labor has lengthy processing times. However, the national interest waiver was not intended to circumvent the labor certification process, and aliens have nearly unfettered access to one or both pathways.

Finally, the Petitioner has not shown how the Beneficiary's proposed endeavor to continue her employment as a Senior Analyst, Product Analytics has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. The Petitioner asserts that its standing within the gaming industry and its high levels of revenue establish the endeavor's

national importance. In addition, the Petitioner proffers that the Beneficiary's endeavor will specifically enhance societal welfare by creating a more personalized player experience for millions of users; and have broad implications across various industries that utilize data analytics to inform business decisions, underscoring its national and potential global impact. However, the Petitioner did not sufficiently explain or demonstrate how the Beneficiary's employment alone would have any projected economic impact or create jobs at a level indicative of national importance. On appeal, the Petitioner does not directly address this issue, and the previously submitted statements and evidence did not sufficiently explain or demonstrate any potential or projected economic impacts likely to result from the Beneficiary's ongoing employment. Without such evidence, the record does not show any benefits to the U.S. regional or national economy resulting from the Beneficiary's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by Dhanasar. 26 I&N Dec. at 890.

For the reasons stated above, we conclude that the Petitioner has not shown that the Beneficiary's proposed endeavor has national importance as required under the first prong of the Dhanasar analytical framework.

A petitioner must meet all three prongs of the Dhanasar analytical framework to establish eligibility for a national interest waiver. Because the Petitioner has not demonstrated the Beneficiary's eligibility under prong one, we need not reach and therefore reserve its remaining arguments concerning eligibility under Dhanasar's second and third prongs. 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

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, it has not established that the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.