U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38261098

Date: MAY 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a civil engineer and researcher, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the record 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 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;
- The individual 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.

Id.

II. ANALYSIS

The Petitioner holds the foreign equivalent of a U.S. Master of Science degree in civil engineering and the Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

In his initial statement the Petitioner described his proposed endeavor as developing a "robust framework for examining the multidimensionality of waterborne diseases and human health in order to enhance water quality and control waterborne diseases in the U.S. and worldwide, reduce the risks of conditions such as NTM infection, and Legionnaires' disease, strengthen economic resilience to water-related challenges, and boost public health in areas near water bodies." The Petitioner explained he would pursue his proposed endeavor while earning his doctoral degree in geography and spatial sciences from the [redacted]

The Director determined the Petitioner established the substantial merit and national importance of his proposed endeavor, but did not meet the second and third *Dhanasar* prongs.

A. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine whether individuals 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. *Id.* The Director determined the Petitioner did not meet the second *Dhanasar* prong under these factors. On appeal, the Petitioner asserts the Director erred and he is well-positioned to advance his proposed endeavor. We agree.

The record shows the Petitioner has the necessary education, skills, knowledge, and record of success in efforts related to his proposed endeavor. The Petitioner holds a Master of Science degree in civil engineering and is pursuing his doctoral degree in geography and spatial sciences. Letters from other researchers in his field attest to his skills, knowledge and record of success in related efforts. For example, D-L-[2], Professor of Ecohydrology at the [redacted] praises the Petitioner's knowledge of deep learning and data analysis and his development of "an effective water monitoring system that forecasts not only the quality of the water supply but also its risk of contamination." M-S-, Associate Professor of Civil Engineering at [redacted] commends the Petitioner's engineering and analytical skills, and "advanced environmental research capabilities." Both D-L- and M-S- praise the Petitioner's past research on topics related to his proposed endeavor.

[2] We use initials to protect the privacy of the referenced individuals.

The Petitioner's statements also detail his plan for future activities. In his initial statement, the Petitioner explained he had two papers under review for publication and planned to pursue a position with the [redacted] upon completion of his doctoral degree. The Petitioner described his future research as "developing an early warning system for waterborne disease outbreaks and creating prediction systems for assessing the water quality of lakes and other water bodies." In response to SCOPS' request for evidence, the Petitioner added that he would also conduct research on "quantifying the impact of hydrological extremes caused by climate change" and develop "a vulnerability framework and decision support system for waterborne disease control."

The Petitioner's publication, citation and funding record and support letters document the interest of other researchers in his proposed endeavor and his progress towards achieving his proposed endeavor. The record shows the Petitioner has published research related to his proposed endeavor in prestigious journals in his field and his articles have been cited numerous times by other researchers. The Petitioner also submitted evidence that two of his articles are within the top ten percent of the most cited publications in his field. Z-K-, Associate Professor at the [redacted] further described in detail how four other research teams relied upon the Petitioner's research in their own published work. On appeal, the Petitioner also submits evidence that he is the co-principal investigator on research funded by the [redacted]

In sum, the relevant evidence demonstrates the Petitioner's education, skills, knowledge, record of success in related efforts, plan for future activities, progress towards achieving the proposed endeavor, and the interest in his work of other scientists in his field. The Petitioner has established that he is well-positioned to advance his proposed endeavor and the Director's contrary determination is withdrawn.

B. Whether on Balance a Waiver is Beneficial

The third *Dhanasar* 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 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish 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 891. The Director determined the Petitioner did not establish his eligibility under these factors. On appeal, the Petitioner asserts the Director erred and he meets the third *Dhanasar* prong.

The Petitioner asserts he merits special consideration under USCIS policy because his proposed endeavor is in a STEM field and involves the critical and emerging technologies of advanced computing and artificial intelligence. USCIS recognizes the importance of progress in STEM fields and the essential role that individuals with advanced STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. Accordingly, strong positive factors to consider when assessing the third *Dhanasar* prong include possession of an

advanced STEM degree, engagement in work furthering a critical and emerging technology, and being well positioned to advance the proposed STEM endeavor of national importance. *Id.* All of these factors are present in the Petitioner's case.

However, the Petitioner has not established his eligibility under the factors identified in *Dhanasar.* The Petitioner asserts it would be impractical for him to obtain a labor certification because his position as a doctoral student researcher is inherently temporary and would not qualify as a permanent job offer meriting a labor certification. While the Petitioner stated he would pursue his proposed endeavor while completing his doctoral degree, he also described how his research would extend beyond his completion of his degree and stated his goal of obtaining a position as a data scientist at the Centers for Disease Control and Prevention. The Petitioner's publication and citation record and support letters further indicate that he would be qualified for such a position upon completion of his degree and nothing in the record indicates that it would be impractical for the Petitioner to secure a job offer or obtain a labor certification. Moreover, EB-2 is a permanent immigrant classification which is inconsistent with a proposed endeavor tied to a temporary position.

The Petitioner also claims the benefits of the Petitioner's research are so significant that waiving the labor certification requirement is compelling regardless of whether other qualified domestic workers are available. The Petitioner claims he has established this factor because he is well-positioned to advance his proposed endeavor. However, the fact that the Petitioner has met the second *Dhanasar* prong does not establish his eligibility under the third *Dhanasar* prong. The Petitioner does not sufficiently articulate how the United States would benefit from the Petitioner's contributions if other qualified U.S. workers are available.

The Petitioner further asserts the national interest in the Petitioner's research is sufficiently urgent to warrant foregoing the labor certification process. The Petitioner bases this assertion on the fact that his proposed endeavor involves critical and emerging technologies identified by the National Science and Technology Council (NSTC). While the Petitioner's proposed endeavor involves artificial intelligence and advanced computing which are included in NSTC's list of critical and emerging technologies, such inclusion is relevant to the national importance and substantial merit of the Petitioner's proposed endeavor and that he is well positioned to advance his proposed endeavor. The inclusion alone does not establish that the national interest in the Petitioner's proposed endeavor is so urgent it warrants foregoing the labor certification process.

The Petitioner also cites articles on waterborne illnesses as evidence of the urgent national interest in his proposed endeavor. The Petitioner submitted articles on drinking water, waterborne diseases, control of neglected tropical diseases, water resource management, and an estimate of burden and direct healthcare cost of infectious waterborne disease in the United States. These articles are relevant to the national importance of the Petitioner's proposed endeavor, but do not establish that the national interest in his research is sufficiently urgent to warrant forgoing the labor certification process.

The relevant evidence does not show that it would be impractical for the Petitioner to obtain a job offer or labor certification, that the United States would still benefit from the Petitioner's contributions even if other qualified U.S. workers are available, and that the national interest in the Petitioner's contributions is sufficiently urgent to warrant forgoing the labor certification process. Considered

together, these factors do not establish 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 in the Petitioner's case.

III. CONCLUSION

The Petitioner has established that he is an advanced degree professional eligible for EB-2 classification, and that he meets the first and second *Dhanasar* prongs. The Petitioner has not demonstrated that he meets the third *Dhanasar* prong and merits a waiver of the job offer requirement in the national interest.

ORDER: The appeal is dismissed.