U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42812946

Date: MAY 12, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a physicist, 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 and that the record satisfies the first *Dhanasar* prong. However, SCOPS determined that the Petitioner had not established that he is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, and that, on balance, waiving the job offer requirement would benefit the United States, as required by the third *Dhanasar* prong. We need not address whether the record satisfies the second and third *Dhanasar* prongs because, for the reasons discussed below, it does not demonstrate that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, which is dispositive. *See id.*

The Petitioner described the endeavor as a plan to complete his postdoctoral research project at [redacted] followed by "prepar[ing] a research proposal based on my expertise and apply[ing] for academic positions at U.S. universities, national laboratories, or research positions in industry." He stated that, initially, he would "[c]onduct research and publish scholarly articles in the field of physics" on a part-time basis, 20 hours per week, at [redacted]. More specifically, he stated he would "focus[] on conducting research in condensed matter physics," and he referenced prior research he conducted "on the properties of spin waves and their quanta, magnons," which "plays a crucial role in the development of quantum computers." He asserted, "Condensed matter physics indeed holds significant [sic] merit and national importance." He referenced his research experience thus far, which includes publishing "three peer-reviewed articles and one preprint article," which received 48 citations at the time he filed the Form I-140, Immigrant Petition for Alien Workers, along with having "given three oral talks at national and international conferences on [p]hysics."[2]

The Petitioner submitted a letter of recommendation from a professor of physics at [redacted] which noted that the Petitioner's research publications thus far "are not numerous." Nevertheless, the letter author opined that the Petitioner "will be a useful and productive member of the United States scientific community." The Petitioner also submitted, in relevant part, copies of publications that provide generalized information regarding science and technology; however, they do not address the Petitioner, the specific endeavor he proposes to undertake, and how the specific endeavor the Petitioner proposes to undertake may have broader implications indicative of national importance.

[2] In response to SCOPS' request for evidence (RFE), the Petitioner submitted what he described as "[u]pdated Google Scholar citation records." However, a petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). 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). Because the Google Scholar citation information the Petitioner submitted in response to the RFE in December 2025 presents a set of facts that did not exist at the time the Petitioner filed the Form I-140 in July 2024, it cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. We note, however, that the new set of facts indicates that the Petitioner's publications received few additional citations in the interim.

The extent of SCOPS' analysis of the first *Dhanasar* prong in its decision on the Form I-140 was paraphrasing the prong's requirements and the conclusory statement, "As discussed in the RFE, the [P]etitioner demonstrated that his proposed endeavor has both substantial merit and national importance, meeting the first *Dhanasar* prong." In turn, the extent of SCOPS' analysis of the first *Dhanasar* prong in its RFE was a summary of the first *Dhanasar* prong's requirements and the conclusory statement, "Here, the [P]etitioner has demonstrated both the substantial merit and national importance of his proposed endeavor, meeting the first prong of the *Dhanasar* framework," without elaborating on what evidence in the record may support such a conclusion.

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 recognize the importance of progress in science, technology, engineering, and mathematics (STEM) fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused 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)(4), https://www.uscis.gov/policy-manual. However, as in all cases, a proposed endeavor implicating a STEM field must demonstrate not only substantial merit but also national importance, such as by having national or even global implications within a particular field, beyond merely being in a STEM field. *See generally id.*; *see also Matter of Dhanasar*, 26 I&N Dec. at 889-90.

Here, the record does not establish how the Petitioner's proposal to complete his postdoctoral research project at [redacted] on a part-time basis, followed by a yet-to-be-determined research proposal at a university or laboratory unknown at the time the Petitioner filed the Form I-140, may have national importance. For example, it does not show how completing the Petitioner's postdoctoral research project and conducting some unspecified additional research may have national or even global implications within the field of physics or any other field, such as those resulting from certain improved manufacturing processes or medical advances. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The opinion letter the Petitioner submitted describes his publications thus far as "not numerous" and, although the letter opines the Petitioner will be "useful and productive," it does not establish how the specific endeavor he proposes to undertake may have national or even global implications within any particular field. *See id.* Relatedly, the record does not establish the significance of the number of citations the Petitioner's "not numerous" research publications had received at the time he filed the Form I-140, nor does it indicate that his similar research publications in the future likely would have a potential prospective impact indicative of national importance. *See id.* In turn, without articulating what the Petitioner would research upon completion of his postdoctoral research project and where—and how—he would conduct such research, the record does not support

any conclusions about the implications and effects of work yet to be described in a location yet to be determined. *See id.*

As another example, although the Petitioner states that the area or field in which he would conduct research "holds . . . national importance," he does not claim—and the record does not support the conclusion—that the specific endeavor he proposes to undertake may have substantial positive economic effects, such as significant potential to employ U.S. workers. *See id.* On the contrary, the only employment the Petitioner described at the time he filed the Form I-140 was his own, on a part-time basis. The record does not show how the Petitioner's own part-time employment at [redacted] indicates the endeavor has a significant potential to employ U.S. workers or that the proposed endeavor otherwise has substantial positive economic effects.

For the foregoing reasons, we withdraw SCOPS' conclusion that the Petitioner demonstrated that the proposed endeavor has national importance and, thus, that the record satisfies the first *Dhanasar* prong.

In summation, considering the record in its entirety, 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. Because we determine that the record does not establish the proposed endeavor has national importance, which is dispositive, we reserve our opinion regarding 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).

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.

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.