U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36990305

Date: MAY 27, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, an engineering and industrial services corporation, seeks employment-based second preference (EB-2) immigrant classification for 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).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Beneficiary is eligible for EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in our 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 a beneficiary's 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 a 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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.

Id. at 889.

II. ANALYSIS

The Beneficiary's proposed endeavor is to continue to work as a cost and project controls engineer on both domestic and international multimillion dollar projects. The Beneficiary's duties include providing oversight on a given project's finances including budget, cashflow, and accruals; onboarding and paying contractors; managing costs and change order management; and management of staff. In their response to SCOPS' request for additional evidence (RFE), the Petitioner described the position as involving review and production of data risk management, and involvement in strategic design projects, as well as being the "primary client point of contact." The Beneficiary's role is described as "managing a successful team of over 30 individuals as they collaborate with various Contractors, Sub Consultants, Internal Teams, on high profile and sensitive projects for clients in Healthcare, Private Data Center/Tech Sector, K-12, Real Estate, and Oil and Gas Services." The Beneficiary has recently fulfilled some of these duties for the Petitioner's client, the [redacted] in Florida, where he serves as Deputy Director of Project Controls in its capital improvement program. The scope of the capital improvement program includes 300 projects worth over $4 billion over a 10-year period.

A. EB-2 Visa Classification

SCOPS determined the Petitioner did not establish the Beneficiary's qualifications for EB- 2 visa classification as an advanced degree professional because no transcripts for his undergraduate and graduate degree programs were provided. On appeal, the Petitioner provides the Beneficiary's degrees, transcripts, and an educational evaluation, which determined that he has the equivalent of a bachelor's degree in construction management, and a master's degree in real estate. As the evidence provided is sufficient to establish the Beneficiary is an advanced degree professional within the meaning of section 203(b)(2)(B)(i) of the Act, we withdraw SCOPS' determination and conclude the Beneficiary is eligible for EB-2 visa classification.

B. First Prong of the *Dhanasar* Framework: Substantial Merit and National Importance

SCOPS determined the Petitioner did not establish eligibility for a national interest waiver because there was insufficient evidence to establish the national importance of the proposed endeavor under the first *Dhanasar* prong. 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.*

Although SCOPS found the proposed endeavor has substantial merit, they also determined the evidence did not establish its national importance. On appeal, the Petitioner contends SCOPS' conclusion "is arbitrary, capricious, and not supported by law or USCIS Regulations and policy." We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. at 537 n.2. For the following reasons, we do not find error in SCOPS' analysis of the evidence and conclude that there is insufficient evidence, by a preponderance, to establish the national importance of the proposed endeavor. Preponderance of the evidence means that the Petitioner must show that what is claimed is "more likely than not" or "probably" true. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence).

In *Dhanasar* we said 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 foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* However, the issue is not whether Petitioner's work in capital improvement programs, as a whole, is nationally important. Rather, the Petitioner must demonstrate the national importance of the specific, proposed endeavor of the Beneficiary's work as a cost and project control engineer.

The Petitioner asserts the national importance of the endeavor is self-evident as the Petitioner acts as a project manager for school districts' capital improvement programs across the United States. As stated, the Beneficiary has most recently engaged in the Petitioner's capital improvement program for [redacted] The Petitioner contends the economic impact and significant potential for employment related to their work on "billion dollar school district projects throughout the United States" establishes the endeavor's national importance. For context, the Petitioner provided their [redacted] cost proposal for the year from July 1, 2024 to June 30, 2025 and asserts that they have worked with [redacted] since 2020. The cost proposal shows that the Beneficiary will work in the position Deputy Director (Controls) for 1,968 hours and will receive $386,997.36 in compensation during that year. The cost proposal contains an organizational chart showing that the Beneficiary will supervise two "APM Controls." However, while the economic and employment data proffered by the Petitioner shows the significance of the Petitioner's work for [redacted], Florida, it does not reflect that the Beneficiary's specific work as a cost and project controls engineer for the Petitioner would provide substantial economic benefits to the region or national economy more broadly at the requisite level. *Id.* In addition, the Petitioner did not demonstrate how the Beneficiary's position as a cost and project control engineer would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner asserts that its standing within the construction industry and its high levels of revenue establish the proposed endeavor's national importance. However, the Petitioner did not sufficiently explain or demonstrate how the Beneficiary's employment alone would have any projected economic impact or job creation, at a level of national importance. *Id.*

The Petitioner asserts the work it performs for school districts across the U.S. is nationally important and that the proposed endeavor "focuses not on the beneficiary's position at [the Petitioner] but on what the beneficiary plans to do within their occupation." While we acknowledge the importance of capital improvements for school districts across the nation, the importance of the proposed endeavor is not evaluated by the importance of the profession in which the Beneficiary proposes to engage, but rather the specific potential prospective impact of the specific endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889-890. The purpose of the national interest waiver is not to ensure continued employment in industries that may have national significance. *Id.* Instead, anyone seeking a waiver must show that the specific endeavor they propose to undertake has national importance. *Id.* Moreover, while we acknowledge that the Beneficiary's work benefits the Petitioner and their clients, the evidence provided is insufficient to establish that the position of cost and project controls engineer working on public school capital improvement projects is of national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner asserts the proposed endeavor relates to a science, technology, engineering, or mathematics (STEM) field, which have been characterized as critical and emerging technologies. The Petitioner contends the proposed endeavor aims to advance the fields of construction engineering and management for public schools and that it will increase U.S. competitiveness. Even if the Petitioner's proposed endeavor is a STEM job, the evidence must still demonstrate this endeavor has national importance. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. Many 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 also have sufficiently broad potential implications to demonstrate national importance. *Id.* On the other hand, as we explained in *Dhanasar*, while proposed classroom teaching activities in STEM may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *See Matter of Dhanasar*, 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.")

Here, the Beneficiary's role with the Petitioner, as described above, does not advance STEM technologies or research and does not have sufficiently broad implications for the field to demonstrate the national importance of the proposed endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Finally, because the evidence focuses on the importance of the industry and the Petitioner's market prominence, it does not establish the potential of the proposed endeavor to broadly enhance societal welfare or contribute to the advancement of valuable technology at nationally important levels. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

On the whole, the Petitioner has not established the Beneficiary's work as a cost and project controls engineer will further the industries' objectives in a nationally significant manner, have broader implication in the field, have significant potential to employ U.S. workers, or have substantial positive economic or societal effects. *Id.* As such, the Petitioner has not demonstrated the national importance of the proposed endeavor or eligibility for a discretionary national interest waiver.

C. Additional *Dhanasar* Prongs

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, because the first *Dhanasar* prong has not been established, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs of the *Dhanasar* framework. *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

Upon de novo review of the record, we agree with SCOPS that the Petitioner has not established the national importance of the proposed endeavor, as contemplated under the *Dhanasar* framework, by a preponderance of the evidence.

ORDER: The appeal is dismissed.