U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43255192

Date: MAY. 27, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a software engineer, 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).

USCIS denied the petition, concluding that while the record shows that the Petitioner is eligible as an advanced degree professional, it did not establish the Petitioner merits a national interest waiver. 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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,[2] 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

The Petitioner is a software development engineer who is currently employed in the United States pursuant to H-1B nonimmigrant status. He earned a Ph.D. in electrical engineering from [redacted] in 2021, and has been employed with [redacted] ever since. He initially proposed to develop "innovative technologies and methodologies that have practical applications in critical data transport and processing." When responding to USCIS' request for evidence (RFE), the Petitioner stated that his proposed endeavor focuses on "advancing methods and systems for detecting fraud and identity misuse in high-volume transaction and identity data streams." He indicates that he will spend five years developing a "coherent framework for signal-based fraud and identity anomaly detection."

USCIS concluded that the Petitioner qualified as a member of the professions holding an advanced degree, and we agree. However, its analysis of the merits of the Petitioner's request for a national interest waiver includes errors of law and fact, and for the reasons discussed below we withdraw that conclusion and remand this matter to USCIS for entry of a new decision.

A. Substantial Merit and 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.*

USCIS determined under the first prong of the *Dhanasar* framework that while the record supported the substantial merit of his proposed endeavor, it did not establish that the proposed endeavor was of national importance. But we note that in making this determination, it misidentified the nature of the Petitioner's proposed endeavor as involving "software engineering as it related to genomic analysis and technologies" and "cancer screenings and research and software engineering for diagnostics

[2] *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).

tools." While USCIS correctly identified the Petitioner's field as software engineering, its consistent characterization of the proposed endeavor as focusing in the biomedical area undermines its analysis of the national importance of the endeavor.

We also note that in its discussion of the national interest of the Petitioner's proposed endeavor, USCIS did not identify or analyze a specific item of evidence in the record. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994)(finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, USCIS' broad statements concerning the record did not sufficiently identify specific deficiencies leading to its conclusion that the Petitioner's proposed endeavor was not of national importance.

On remand, USCIS should thoroughly review the record to determine whether the national importance of the Petitioner's proposed endeavor to develop a fraud detection platform is supported by the evidence in the record. In doing so, USCIS If USCIS determines it is not, they should provide an analysis of the evidence which fully explains the deficiencies in the record.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Matter of Dhanasar*, 26 I&N Dec. at 890. To determine whether they 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.*

SCOPS concluded without analysis that the Petitioner is well positioned to advance his proposed endeavor. We first note that given the misidentification of the proposed endeavor in SCOPS' decision, it is not apparent that its conclusion regarding the Petitioner's positioning to advance that endeavor was based upon an analysis of relevant facts. Accordingly, we also withdraw SCOPS' conclusion in this regard.

We acknowledge that the Petitioner's Ph.D. and proposed endeavor are in a STEM field and that this is an especially positive factor in determining his positioning to advance his endeavor,[3] but this is only one factor of many to be considered under the second prong of the *Dhanasar* analysis. In his response to USCIS' RFE, the Petitioner provided a lengthy technical description of his plans to achieve his proposed endeavor. On remand, USCIS should review this plan and consider whether it is sufficiently supported in the record in terms of the Petitioner's progress towards achieving his endeavor, his reliance upon his employer's material support, the evidence of any financial support, and the interest of any potential collaborators, customers, users, or other relevant individuals or entities.

[3] *See generally* 6 *USCIS Policy Manual* F.5(D)(4), www.uscis.gov/policy-manual.

C. Whether on Balance a Waiver is Beneficial

The third 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. *Matter of Dhanasar*, 26 I&N Dec. 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.

Should USCIS conclude on remand that the Petitioner meets the requirements of the first two prongs of the *Dhanasar* framework, they should reconsider the record, including the Petitioner's appeal brief, in light of the foregoing analysis to determine whether the Petitioner has established his eligibility under the third prong.

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.