U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38420339

Date: MAY 30, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a software engineer, seeks second preference immigrant classification (EB-2) as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 classification. See section 203(b)(2)(B)(i) of the Act.

SCOPS denied the petition, concluding that the Petitioner did not demonstrate that he merits a discretionary waiver of the job offer requirement in the national interest. The matter is now before us on appeal. 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

SCOPS determined that the Petitioner qualifies as a member of the professions holding an advanced degree. To demonstrate he is an advanced degree professional, the Petitioner submitted a copy of his Master of Science in computer science and engineering degree from the University of [redacted], awarded in May 2020. We agree with this determination.

The remaining issue is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. SCOPS found that while the Petitioner demonstrated that his proposed endeavor has substantial merit, he did not establish the endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. SCOPS further found that the Petitioner established that he is well-positioned to undertake the endeavor under *Dhanasar's* second prong, but that, on balance, it would not be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification, under *Dhanasar's* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[2]

The Petitioner is a software engineer working for his employer, [redacted] where he designs and delivers new security features for [redacted] products and ensures constant availability and overall performance maintenance. The Petitioner's proposed endeavor is to continue working for the [redacted] product, a critical component of [redacted] that offers a number of services to protect companies from data breaches and cyberattacks. The [redacted] helps deliver unified cloud security for "Software as a Service" (SaaS) applications and ultimately provides businesses with visibility and control across their corporate SaaS applications to secure workplace tools, detect shadow information technology (IT), and control user access. The Petitioner's initial filing stated that his "field of endeavor" was software engineering, specifically in infrastructure and systems architecture, data structures and algorithms revolved around designing software architecture and adding new features for enhancements to Cloudflare's products to improve client experience.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor a petitioner proposes to undertake. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. To evaluate whether the proposed endeavor satisfies the national importance requirement we focus on the specific endeavor that the foreign national proposes to undertake and look to evidence documenting its "potential prospective impact." Id. at 889.

SCOPS determined that the Petitioner's proposed endeavor has substantial merit. Upon a de novo review, we agree with this determination. Regarding the national importance of the proposed

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

endeavor. SCOPS's decision acknowledged the importance of the field of software engineering and that [redacted] as a company benefits the nation. However, SCOPS determined that the Petitioner did not demonstrate that his specific proposed endeavor activities extend beyond his employer to impact the field more broadly or have significant potential to employ U.S. workers or other substantial economic effects at a level commensurate with national importance.

On appeal, the Petitioner submits a brief. He asserts that he submitted ample and probative evidence demonstrating his eligibility for a national interest waiver. The Petitioner describes the proposed endeavor and claims it will impact the United States's economy and interests in cyber-resiliency and cybersecurity. The Petitioner claims his contributions to [redacted] go beyond his employment because [redacted] is the leading network provider worldwide with millions of customers, including 35 percent of Fortune 500 companies, 20 FedRAMP (Federal Risk and Authorization Management Program) data centers, and U.S. government agencies such as the Department of Homeland Security, Department of State, Department of the Interior and the Library of Congress. The brief discusses [redacted] contributions to network security software on a global scale and the U.S. government's vital interests and initiatives in protecting network systems and data. The Petitioner asserts that SCOPS failed to consider his endeavor in relation to the US government initiatives, and claims that SCOPS's reliance on the argument that a software engineer's work only benefits their employer clearly demonstrates that the SCOPS's conclusion is arbitrary and capricious. The Petitioner then describes aspects of the software engineer occupations and mentions they contribute to the efficiency and integrity of the country.

We adopt and affirm SCOPS' decision that the Petitioner has not established the national importance of the proposed endeavor. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted"). SCOPS provided the law related to the national importance requirement, provided a description of the proposed endeavor, and thoroughly and accurately evaluated the Petitioner's claims and evidence related to whether the proposed endeavor has national importance. SCOPS correctly concluded that the Petitioner did not establish that the proposed endeavor has national importance. In making this finding, SCOPS stated that the Petitioner's work in the software engineering industry and the importance of the field do not establish the national importance of the proposed endeavor. SCOPS noted that the relevant question is not the importance of the industry in which the Petitioner would work, rather it is whether the specific proposed endeavor has national importance. The Petitioner did not provide evidence of how the proposed endeavor would sufficiently extend beyond his employer, [redacted], or how his particular proposed endeavor would impact the cyber industry more broadly at a level commensurate with national importance. Further, the Petitioner has not shown that the particular work he proposes to undertake offers original innovations that contribute to the advancement of the industry or have broader implications for the software engineering field. SCOPS concluded the decision by finding that the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, SCOPS found that the Petitioner did not establish the proposed endeavor is of national importance.

On appeal, the Petitioner does not provide any evidence to overcome the evidentiary deficiencies detailed by SCOPS. Rather he makes the same and similar arguments as made previously. We acknowledge that the Petitioner has provided valuable software engineering services for the [redacted] and its customers, but he has not offered sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor that rises to the level of national importance. The Petitioner's statements characterize his work as valuable for maintaining the reliability of [redacted] technology, however, they do not sufficiently detail how his endeavor would be different from work typically performed by software engineers. For instance, the Petitioner has not detailed or established his plans to introduce novel technologies or software engineering advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulated how he will contribute to development of our nation's software engineering industry.

The record does not establish, by a preponderance of the evidence, that the proposed endeavor has national importance. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third prong outlined in Dhanasar. 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).

ORDER: The appeal is dismissed.