U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39516473

Date: OCT. 1, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a professional investigator and safety inspector for an energy corporation who 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 (NIW) 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 Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but he did not merit a discretionary waiver of the job offer requirement in the national interest. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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. NATIONAL INTEREST WAIVER

The Petitioner earned the equivalent of a U.S. Bachelor of Science in Civil Engineering and has amassed over 25 years of experience in the field of petroleum engineering. As his proposed endeavor he intends to continue the work he currently performs for his employer as a technical and process safety assurance examiner.

> In my current role [], I am in the best position to contribute to the nation's energy security by ensuring that all our well design and drilling execution plans are of the highest quality that meet industry and company standards, and, as a result, prevent loss of containment incidents that harm people and the environment.

He also expressed expertise in the planning and deployment of a cost-saving method to develop mature or marginal offshore fields, a process that also serves as an option for drilling wells for carbon capture. He noted that he intends to impart his knowledge to young professionals through training and mentoring.

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.* When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the alien will work. Rather, we focus on the "the specific endeavor that the alien proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *Id.* A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects" (*Id.* at 890), or has the potential to widely advance and broadly affect U.S. strategic interests (*Id.* at 892).

USCIS policy also provides that "if the evidence of record demonstrates that the person's proposed endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance." *See generally* 6 *USCIS Policy Manual* F.5(D)(3), https://www.uscis.gov/policy-manual (citing *Matter of Dhanasar*, 26 I&N Dec. at 889–90, 892).

The Petitioner provided letters from others in his field who have worked with him. SCOPS decided the Petitioner's claims and evidence demonstrated his endeavor had substantial merit but fell short of establishing his proposed endeavor was nationally important under this prong. On appeal, the Petitioner notes his work ensures well designs and drilling execution are of the highest quality and meets industry and company standards, which in turn leads to increased efficiency, reduced costs, improved safety and less environmental harm. He notes a significant implication of his proposed work is the prevention of mishaps during drilling and completion processes that can result in casualties, property loss, and environmental damage. He also ties these efforts into an executive order relating to increasing American energy.

However, that executive order relating to increasing American energy was issued in 2025, which was after he filed the petition. As a result, he cannot rely on that executive order in this petition. A request for an immigration benefit "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be through adjudication." 8 C.F.R. § 103.2(b)(1); *Delaware Valley Reg'l Ctr., LLC v. DHS*, 106 F.4th 1195, 1204–06 (D.C. Cir. 2024); *Ahmed v. Mukasey*, 519 F.3d 579, 582 (6th Cir. 2008). Any additional evidence submitted in connection with a benefit request at a later date, including evidence responding to a request from USCIS, must also establish "eligibility at the time the benefit request was filed." 8 C.F.R. § 103.2(b)(12); *Robinson v. Napolitano*, 554 F.3d 358, 364 (3d Cir. 2009). "Under this rule, USCIS will deny [an immigration benefit] if the [filing party] becomes eligible only after the [benefit] was filed." *Tingzi Wang v. USCIS*, 375 F. Supp. 3d 22, 27 (D.D.C. 2019) (citing 8 C.F.R. § 103.2(b)(12)); *Doe v. USCIS*, 410 F. Supp. 3d 86, 100 (D.D.C. 2019).

The Petitioner identifies two letters in the appeal asserting they explain why his endeavor is of national importance. The first from [redacted] who is a general manager for the Petitioner's employer, described the work the alien performs. Mr. [redacted] then stated the Petitioner's service is critically important to the nation and the industry because the United States anticipates accelerating its oil and gas "exploration and production activities in line with the current administration's focus on energy security." Mr. [redacted] letter was dated after the Petitioner filed the petition and his basis for these statements is also the executive order the current administration issued several months after the petition filing date. But the Petitioner must establish that he has satisfied all eligibility requirements for the immigration benefit when he filed the petition. 8 C.F.R. § 103.2(b)(1), (12). And the second letter suffers from this same evidentiary shortcoming of relying on factors that occurred after the petition filing date when the author claims the Petitioner's efforts are of national importance.

Next, the Petitioner generally claims that the work of safety personnel in the oil and gas industry is inherently of national importance as it provides important benefits to the country, as well as on a global scale. But his focus on the importance of the industry is misplaced. We stated as much in the *Dhanasar* decision when we noted that we focus on "the specific endeavor that the alien proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of the actual proposed work. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's final argument under prong one is one in which he notes that the *Dhanasar* decision was not intended to only apply to military or national security issues, and that it can also apply to an alien advancing semiconductor technology as well as to his field. And we do not disagree with that prospect. In our decision above, we do not convey that an alien working in the Petitioner's industry

inherently cannot satisfy the national importance element under prong one. Instead, the shortcoming here is the work he proposes for the future is effectively the same he has performed over the years and he has not advanced a clear explanation of why that will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" in the industry (*Id.* at 889). At best, his endeavor will make incremental impacts either to his employer or possibly in the field, and he has not explained how those are discernable to qualify under *Dhanasar's* prong one requirements.

Because the Petitioner has not sufficiently established the national importance of his proposed endeavor as required here, he has not demonstrated eligibility for an NIW of the job offer requirement.

B. We Reserve *Dhanasar's* Remaining Second and Third Prongs

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 n.8 (BIA 2025) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

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.