U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38613760

Date: OCT. 09, 2025

Appeal of Service Center Operations Decision

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

The Petitioner, a civil 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).

Service Center Operations (SCOPS) denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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.

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

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's proposed endeavor is "to craft innovative solutions for concrete works in challenging environments, particularly wet areas and flood zones." He further states that his proposed endeavor "brings to the construction industry a well-controlled thermal curing that ensures optimal conditions for concrete hardening" that "will deeply impact civil engineering by allowing the advancement and acceleration of projects even in adverse circumstances."

SCOPS determined the Petitioner qualified for classification as an advanced degree professional and that the proposed endeavor has substantial merit and national importance.[3] However, SCOPS concluded the Petitioner did not establish that he is well-positioned to advance his proposed endeavor.

A. Well-Positioned to Advance Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual, and whether they are well-positioned to advance it. *Id.* at 890. In determining whether a petitioner is well-positioned to advance their proposed endeavor, we consider factors including but not limited to: the individual's 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.*

First, SCOPS concluded that the Petitioner is not well-positioned, in part, because he does not have a license to practice the profession in the United States. On appeal, the Petitioner explains that a U.S. license is not required because his role is that of a consultant, researcher, and educator. He asserts that his proposed endeavor is limited to conducting workshops, providing technical consulting, and

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[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).

[3] SCOPS determined without analysis that the Petitioner established his proposed endeavor is of substantial merit and national importance. Based on our de novo review of the record, we disagree with SCOPS' determination that the Petitioner established his endeavor is nationally important. The record does not establish that the Petitioner's proposed endeavor has broader implications to the field of construction beyond the companies he will partner with or that it has significant potential to employ U.S. workers or other substantial positive economic effects, commensurate with national importance as contemplated by *Dhanasar*. *Matter of Dhanasar,* 26 I&N Dec. at 889-89. However, because we agree that the Petitioner has not established he is well-positioned to advance his endeavor, which is dispositive of this appeal, we will reserve the issue of national importance of his endeavor. *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). The Petitioner should address this issue in any future filings.

facilitating collaborations between U.S. entities and his innovative thermal curing technology, which are activities that do not require a U.S. license. Upon review of the record, we agree with SCOPS that a license is required for the proposed endeavor.

In the Form I-140, Immigrant Petition for Alien Workers, the Petitioner indicated his job title as a civil engineer. The U.S. Department of Labor's *Occupational Outlook Handbook*, an authoritative source on duties and educational requirements for a wide variety of occupational categories, states that "[a]lthough licensure requirements vary by state, civil engineers usually must be licensed if they provide services directly to the public."[4] Here, the Petitioner does not indicate where he will pursue his proposed endeavor. However, according to the letter of interest from [redacted]), the Petitioner will partner with [redacted] to build "good quality homes" for the public. Therefore, it appears that he will be providing "services directly to the public" and a U.S. license is required.[5] While the Petitioner also asserts that he will be disseminating information and working with U.S. licensed professionals that will satisfy the licensing requirements where applicable, the record does not indicate whether professionals at [redacted] or other potential partners are licensed.

The Petitioner also contends the record provides substantial evidence that he is well-positioned to advance his proposed endeavor, which includes a professional plan, letters of interest, academic credentials, record of success, and industry engagement. However, we agree with SCOPS' determination that the Petitioner is not well-positioned to advance the proposed endeavor.

The evidence shows the Petitioner earned a bachelor's degree in civil engineering and is currently pursuing a master's degree in leadership and project management. The record also shows that the Petitioner has over 20 years of experience in the fields of civil engineering and construction. While this is sufficient to show his eligibility for the underlying immigrant classification and is sufficient to show a plan for continued employment in the field, it does not establish that his bachelor's degree alone is sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look at a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding. *See generally 6 USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

In addition, the Petitioner submitted letters of recommendation from colleagues in his field commending his skills and knowledge and discussing his record of success in efforts related to his proposed endeavor. However, the letters contain conclusory statements or characterizations about the Petitioner and his work that are not sufficiently supported by specifics in the letters themselves or with other documentation in the record to establish that he is well positioned to advance his endeavor. For instance, the letters discuss the Petitioner's past projects and conclude that he is well-positioned to advance his proposed endeavor based on his professional experience. General observations that a petitioner has extensive experience and achievements in their field are not sufficient alone for a petitioner to meet their burden of proof without corroborating evidence. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19

[4] Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Civil Engineers, https://www.bls.gov/ooh/architecture-and-engineering/civil-engineers.htm#tab-4.

[5] The Petitioner submitted evidence of his Brazilian Professional Identity Card stating his title as Civil Engineer. However, the Petitioner did not submit evidence that his identity card constitutes as a license to practice the profession of civil engineer.

I&N Dec. 791, 795 (Comm'r 1988). We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought and the submission of expert letters is not presumptive of eligibility. *Id.* Here, we conclude that letters are not sufficiently detailed or substantiated for the Petitioner to meet his burden of proof.

Moreover, the record does not include sufficient evidence regarding the Petitioner's model or plan for future activities and any progress towards achieving the proposed endeavor. On appeal, the Petitioner asserts that his professional plan and letters of interest "clearly outline his strategy for disseminating his technology and establishing partnerships with U.S. construction firms, academic institutions, and industry stakeholders." In his professional plan, the Petitioner states that he intends to foster relationships with architects, environmental engineers, and urban planners to pursue his proposed endeavor. The letter of interest from [redacted] in Brazil states that they are interested in collaborating with the Petitioner to develop a course in concrete technologies. However, the Petitioner does not mention in his professional plan that his proposed endeavor includes developing an educational course. Furthermore, in the letter from [redacted], the author asserts that the Petitioner's engineering and construction solutions will ensure that their projects in the United States are completed safely, efficiently, and with highest level of quality and that he is interested in partnering with the Petitioner to build affordable and good quality homes. As for the letter from [redacted] LLC, the author also states he is interested having a business partnership with the Petitioner for his construction business. While we acknowledge these letters of interest, they contain unsubstantiated claims. That is, the Petitioner has not provided further evidence, such as any contracts or agreements, to show he has established partnerships with these companies. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without more, the Petitioner has not sufficiently demonstrated that he is well-positioned to pursue his proposed endeavor.

The final factor enumerated in *Matter of Dhanasar* relates to evidence of interest of potential customers, users, investors, or other relevant entities or individuals. Here, we similarly conclude that the evidence in the record does not weigh in favor of demonstrating that the Petitioner is well-positioned to advance the endeavor. Again, we acknowledge the letters from [redacted] and [redacted]. However, the record lacks evidence of any existing contracts or agreements with these entities.

Therefore, for these reasons, we agree with the Director that the Petitioner has not shown he is well positioned to advance the proposed endeavor.

B. Whether, on Balance, Waiving the Job Offer Requirement Would Benefit the United States

The third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification. Because the Petitioner has not demonstrated that he is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, we need not address whether the Petitioner has established the third prong of the *Dhanasar* framework. We acknowledge the Petitioner's arguments on appeal as to the third prong but, having found that the evidence does not establish that the Petitioner is well-positioned to advance the proposed endeavor, we will not address those arguments here. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible 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 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.