U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39374202

Date: SEPT. 19, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a people analytics researcher 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 to U.S. Citizenship and Immigration Services (USCIS) 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 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
- On balance, waiving the job offer requirement would benefit the United States.

[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).

Id.

II. NATIONAL INTEREST WAIVER

The Petitioner earned a United States equivalent of a Ph.D. in human resource management from a foreign institution, and he is an associate professor in the area of human resources at [redacted].

A. Proposed Endeavor and Material Changes

The Petitioner offered a personal statement when he filed the petition that described the general end result of his research, and that it would produce "predictive models for understanding and analyzing employee thoughts, feelings, and behaviors in the workplace, in order to advance human resource knowledge, inform policymakers, and enhance organizational effectiveness." He proposed to progress his endeavor through "survey design, data collection through questionnaires, and expertise in human resource analytics." The specific study he intended to engage in (i.e., the actual work he would perform also referred to as his proposed endeavor in the NIW context) was "conducting a comparative study on migrant workers' reactions to deceptive recruitment practices, particularly examining the differences in responses between those from power distance cultures and those from individualistic cultures, all from a social exchange perspective." This was the Petitioner's proposed endeavor as this study was what he would actually do if the immigration benefit he is seeking was approved.

The Petitioner indicated he would continue to circulate his work in the field through peer-reviewed publications and open-source repositories and that he intended to pursue a position as an associate professor in the United States, with a preference for serving at the University of North Dakota. In the petition cover letter the Petitioner's attorney prepared, it only discussed the predictive modeling aspects without explaining how the migrant worker study had substantial merit or national importance. Ultimately within the initial filing, the Petitioner conveyed that he would serve as an associate professor in the United States and he would study how migrant workers from different cultural backgrounds react to deceptive recruitment practices. Based on that presentation, SCOPS indicated within their request for evidence (RFE) that his proposed endeavor had substantial merit.

But when he responded to SCOPS' RFE, the Petitioner didn't even mention the migrant worker study that he relied on in the initial filing. Instead, within his updated personal statement the Petitioner mentioned the general end result of his research and stated he was seeking:

> [A] better understanding of underlying factors influencing employees to engage in workplace substance abuse from a human resource perspective. I am also interested in examining how school violence is associated with higher turnover among K-12 school employees in the United States. This proposed endeavor holds significant national importance, as it is aimed to address the public health challenge the United States is currently facing, which undermines both economic growth and public welfare. Furthermore, these problems have significant national importance because it has affected millions of employers, employees, parents, and students in the United States, as these problems continue to escalate.

Neither the Petitioner's updated personal statement in the RFE response nor that response's cover letter from the Petitioner's attorney explained why there was a change to the Petitioner's intended study, or proposed endeavor. The only indication was in the Petitioner's updated statement with the new information. And within the cover letter, it only presented an extended block quote carried over from the updated personal statement the Petitioner submitted with the RFE.

Because the basis for the Petitioner's proposed endeavor claim changed to such an extent between the initial filing and his RFE response, we conclude that he made a material change to the petition and to his eligibility claims. We consider this a material change to the Petitioner's claims as he had not established his eligibility at the time of filing but sought to remedy a shortcoming in his filing with materially different evidence after SCOPS put him on notice. A visa petition may not be approved after a beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If a petitioner is notified of a deficiency in their claims or evidence, new claims or new material that greatly differs from that previously presented without a sufficient explanation, will not carry sufficient evidentiary weight to meet their burden of proof.

This ambiguity the Petitioner introduced serves as an independent basis to deny the petition or to dismiss the appeal. And because this leaves open questions as to what activity the Petitioner intends to serve as the focus of his proposed endeavor, it also leaves us facing ambiguities as to what claims we should evaluate, or whether he might make future changes to his endeavor. The Petitioner has not established the substantive nature of his proposed endeavor. Absent that foundational showing, we cannot decide whether he has satisfied any of *Dhanasar's* three prongs as it precludes us from making a proper determination of whether: (1) the proposed endeavor has both substantial merit and national importance; (2) he is well positioned to advance the proposed endeavor; and (3) on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The *Dhanasar* framework cannot be applied to multiple proposed endeavors that have developed differently over the course of the proceedings and that have different effects in the areas that would comprise the Petitioner's areas of research. It is the Petitioner's burden to demonstrate eligibility and as part of that duty he must identify the specific endeavor he proposes to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. But the Petitioner here has not met that burden, which is comprised of both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

Despite the above fatal flaw to this filing, it appears this appeal still warrants dismissal on the merits. 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 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).

In reviewing the evidence and arguments in the record, it does not appear that the Petitioner has preponderantly demonstrated the national importance of his proposed endeavor as it lacks evidence demonstrating an adequate potential prospective impact, or sufficient broader implications, within his field. Lacking from the record is an indication of the extent to which the Petitioner's 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." *See generally* 6 *USCIS Policy Manual*, *supra*, F.5(D)(3) (citing *Matter of Dhanasar*, 26 I&N Dec. at 889–90, 892). Nominal or incremental improvements in a field are not sufficient to meet the national importance requirement under the *Dhanasar* framework. *Matter of Dhanasar*, 26 I&N Dec. at 889–90. So even if we were not dismissing based on the material change the Petitioner made to his proposed endeavor, we would still issue an adverse decision under *Dhanasar's* first prong's national importance requirements.

B. We Reserve Our Determination on The Petitioner's Remaining Appellate Claims

As we explain above, the Petitioner made a material change to the petition and that prevents us from making a proper determination. 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. Section 291 of the Act, 8 U.S.C. § 1361. 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.