

December 19, 2024

Officer #: 0054
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Texas Service Center
ATTN: RFE/NOID/NOIR/NOIT
6046 N Belt Line Rd STE 111
Irving, TX 75038-0011

RE: Request for Evidence Notification Dated October 9, 2024
File Number: IOE0927336924
Petitioner/Beneficiary: Oscar JIMENEZ MONTERO
Classification Sought: INA § 203(b)(2)(B) NIW
Type of Petition: I-140

Dear Immigration Officer:

This letter is respectfully submitted in response to your Request for Evidence dated October 9, 2024 ("RFE"). In response to the RFE, the Petitioner provides the following Response and additional evidence, as well as the evidence submitted along with the initial filing:

- I. The Petitioner's proposed endeavor has national importance;
- II. The Petitioner is well-positioned to advance his proposed endeavor; and
- III. On balance, it is beneficial to the United States to waive the requirement of a job requirement and thus a labor certification.

PRELIMINARY DISCUSSION

We respectfully note that USCIS has conceded the following: (1) that the Petitioner qualifies for classification as an Advanced Degree Professional, and (2) that his endeavor is of substantial merit. As such, the focus of this response will be on the national importance of the Petitioner's proposed endeavor, that he is well positioned to advance his proposed endeavor, and that on balance it is beneficial to the United States to waive the requirements of a job offer and labor certification.

THE PETITIONER QUALIFIES FOR THE NATIONAL INTEREST WAIVER:

I. The Petitioner's proposed endeavor has national importance:

For the first prong assessment, the Administrative Appeals Office (AAO) established in their precedent decision, *Matter of Dhanasar* (hereafter "*Dhanasar*"), that USCIS officers must conduct a two-part assessment of a petitioner's proposed endeavor. Specifically, the first prong focuses on the substantial merit and national importance of a petitioner's proposed endeavor considering, "[t]he specific endeavor that the foreign national proposes to undertake." In order to determine whether a foreign national's proposed endeavor has national importance, in *Dhanasar* the AAO outlined, "*in determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An undertaking may have national importance for example, because it has national or even global implications within a particular field.*" *Matter of Dhanasar*, 26 I&N Dec. 884, 890 (AAO 2016).

The importance of the *Dhanasar* decision is fundamental in this matter since it provides a new analytical framework and instruction to immigration officers. Indeed, the aim pursued is that officers conduct a holistic and deep analysis to achieve the purpose of the Congress within the Immigration and Nationality Act, specifically under subparagraph (B) of section 203(b)(2), in order to avoid "unnecessary subjectivity". In this regard the AAO examined in the mentioned precedent that,

Based on our experience with that decision in the intervening period, we believe it is now time for a reassessment. While the first prong has held up under adjudicative experience, the term "intrinsic" adds little to the analysis yet is susceptible to unnecessary subjective evaluation. Similarly, the second prong has caused relatively few problems in adjudications, but occasionally the term "national in scope" is construed too narrowly by focusing primarily on the geographic impact of the benefit.

Therefore, it is clear that in *Dhanasar* the AAO intended to structure a lawful framework when exercising discretion since it was considered that,

Today, we vacate NYSDOT and adopt a new framework for adjudicating national interest waiver petitions, one that will provide greater clarity, apply more flexibly to circumstances of both petitioning employers and self-petitioning individuals, and better advance the purpose of the broad discretionary waiver provision to benefit the United States.

Furthermore, in *Dhanasar*, the AAO established that the evidentiary burden of proof for demonstrating the national importance of a petitioner's proposed endeavor is a "Preponderance of the Evidence" standard. Under the preponderance of the evidence standard, a petitioner must demonstrate that "*he or she more likely than not satisfies the qualifying elements.*" *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The burden of proof has been further defined as requiring the factfinder to assess "*Whether the evidence is adequate to make 'the existence of a fact... more probable than its nonexistence.'*" *Concrete Pip & Prods. Of Cal., Inc. v. Constr. Laborers Pension Tr. For S. Cal.*, 508 U.S. 602, 622 (1993). Therefore, if a petitioner provides sufficient evidence for a reasonable factfinder to determine that there is better than a 50% chance the proposed endeavor has national importance, then the burden of proof has been met and the prong is satisfied.

Moreover, the AAO noted in the *Chawathe* case that:

[I]n adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Therefore, a simple or superficial Request for Evidence leads to an arbitrary exercise of discretion, a scenario not tolerated by the law. Hence, to avoid any degree of arbitrary exercise of discretion, the decision must be structured on a reasonable standard which:

[r]equires agencies to engage in “reasoned decision_making,” Michigan v. EPA, 576 U. S. 743, 750 (2015) (internal quotation marks omitted) and directs that agency actions be “set aside” if they are “arbitrary” or “capricious,” 5 U. S. C. §706(2)(A) The APA’s arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained. [T]he Court simply ensures that the agency has acted within a broad zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision. See FCC v. Fox Television Stations, Inc., 556 U. S. 502 (2009); Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U. S. 29 (1983). (Department of Homeland Security et al. v. Regents of the University of California et al, 140 S. Ct. 1891 U.S. (2020))

In sum, not only must the decision be issued within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.

Additionally, we note that in the analysis of the Petitioner's instant petition, the content of the RFE does not comment on the unmet requirements, nor does it properly describe the documents used to review the case, its deficiencies, or what sort of information is missing from the case to meet these criteria. **This represents a significant deficiency within the adjudicatory process. No explanation has been provided to understand the reasoning of the officer in challenging the Petitioner’s satisfaction of the requested classification. Simply stating that “[T]he evidence submitted does not support the petitioner’s statements that the proposed endeavor will have potential prospective impact...” does not mean that the adjudicating officer has duly complied with their duty to review and analyze all the evidence presented and explain the reasoning employed in accordance with the applicable regulations and the Policy Manual.** Without clear guidance on the supposed insufficiencies within the evidence submitted it is materially impossible for the Petitioner to understand the assessment criteria and respond to this RFE with supplemental evidence that corroborates that he/she qualifies as an advanced degree professional.

According to the RFE, the Petitioner provided insufficient evidence and information to demonstrate the proposed endeavor is of national importance. To address this, USCIS requests:

1. *A detailed description of the proposed endeavor and why it is of national importance;*

The Request takes issue with the perceived lack of proposed endeavor provided with the initial petition. We must first note that the Petitioner provided a clear, succinct proposed endeavor by and through his proposed endeavor statement submitted with the initial filing as well as through the letter from counsel submitted with the initial filing. ***See Initial Petition Exhibit 6.*** Though the statement provided therein clearly defines what the Petitioner intends to accomplish in the United

States beyond his proposed employment, USCIS asserts that the statement is insufficiently succinct. That said, we have attached a further detailed description of the Petitioner's proposed endeavor and why it is nationally important. The Petitioner's proposed **endeavor** is as follows:

My proposed endeavor is to develop and implement comprehensive training programs and optimization strategies for process improvement and data-driven decision-making, by integrating affordable technologies powered by artificial intelligence (AI) and robotic process automation (RPA). This initiative aims to save time and resources, enhance competitiveness, and offer employees valuable upskilling opportunities in high-demand tools. The focus will be on supporting American, Latin, and other minority owned, small and medium-sized enterprises (SMEs) in maximizing their operational efficiency and growth potential.

I will do so by leveraging my academic background as a Systems Engineer my experience of over 5 years as a hands-on professional experience in process automation, implementing robotic process automation (RPA) and artificial intelligence (AI) technologies, additionally my tenure as a university professor, in furtherance of my proposed endeavor for the benefit of the United States. My work will continue to support advancements in my field by instilling a data-driven culture within organizations, thereby enhancing accuracy and expediting decision-making processes. I aim to achieve this through peer-reviewed publications and conference presentations that disseminate findings and methodologies relevant to the implementation of these technologies in industry. Through equipping U.S. companies and their workforce with essential digital skills and promoting technological advancements, I intend to bolster their competitiveness in both U.S. and global markets.

See Exhibit 2. As outlined above, the Petitioner has provided a well-wrought, succinct, and complete proposed endeavor for USCIS to base their adjudication. In addition, it demonstrates that through the creation of his independent consultancy, the Petitioner will help SMEs with their digital transformation, adopting cutting-edge technologies to improve their internal processes. Through his endeavor, the Petitioner will promote national objectives that focus on furthering the competitiveness, efficiency, and economic growth of SMEs. Supporting economic resiliency and job creation, Mr. Jimenez Montero's endeavor will directly contribute to federal priorities highlighted by the U.S. Administration, evidencing that the Petitioner's undertaking impacts a matter that has been described by government entities as having national importance. **See Exhibits 3 and 4.** We respectfully request that USCIS utilize the above-provided endeavor for assessing the Petitioner's case and his satisfaction of the three prongs enumerated under the *Dhanasar* framework.

2. *Documentary evidence that supports Petitioner's statements and establishes the endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives;*

We also must respectfully note that, in light of the above-mentioned precedent case law, the Request fails to adequately assess any of the evidence provided along with the initial filing and falls short of contemplating the entirety of the evidence submitted for demonstrating the national importance of the Petitioner's proposed endeavor. That said, on statutory basis, officers must execute a substantial assessment of the evidence submitted by petitioners. *See 8 C.F.R. § 203 (b)(2)(A)(B)(C)*. This is also highlighted within the USCIS Policy Manual. *See Chapter 5 USCIS Policy Manual*. It should be noted that the USCIS Policy Manual aims at providing "[t]ransparency of immigration policies and furthers consistency, quality, and efficiency consistent with the USCIS mission¹" and, also, sets forth, "The Policy Manual contains the official policies of USCIS and assists immigration officers in rendering decisions. The Policy Manual is to be followed by all USCIS officers in the performance of their duties but it does not remove their discretion in making adjudicatory decisions." Therefore, USCIS' officers are compelled to execute their duties in accordance with the USCIS mission, and their discretion in making adjudicatory decisions must be a result of lawful judgment, that is to say, a result of a complete and deep examination and analysis of the petitioner's request and evidence submitted for that purpose.

In view of the above, we must respectfully note that ample evidence was provided with the initial petition to demonstrate that the Petitioner's proposed endeavor was correctly stated and that it is of national importance. As stated above, the Request fails to examine the entirety of the evidence duly presented along with the initial filing which account for the prong under study. The Petitioner submitted a total of **5 pieces** of objective, documentary evidence demonstrating the proposed endeavor's national importance. *See Initial Petition Exhibits 13.1-13.5*. The failure to discuss all elements of the evidence submitted with the original petition served to the direct disadvantage of the Petitioner and is a significant defect in both the analysis of his satisfaction of this prong and the Request as a whole. In prior cases, federal courts have noted that decisions failing to contemplate or discuss the entirety of the evidence submitted with a petitioner's filing amounts to a critical error in the adjudicative process. In *Buletini v. I.N.S.*, the court stated that the "failure to consider all of the relevant evidence submitted by a plaintiff constitutes an **abuse of discretion**." *Buletini v. I.N.S.*, 860 F. Supp. 1222, 1233 (E.D. Mi. 1994).

In line with the RFE, we are hereby submitting additional objective, documentary evidence to further support the national importance of the Petitioner's endeavor.

The proposed endeavor addresses issues that have been the subject of multiple governmental initiatives and are the focus of the U.S. enterprise policy: **ensuring that the country's small and medium-sized businesses have the necessary support and technological tools to grow, develop, and position themselves competitively in the modern business landscape.**

For instance, the White House's **Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence** (AI Executive Order) recognizes the

¹ *See* <https://www.uscis.gov/policy-manual>

extraordinary potential that AI has in making the world more prosperous, productive, innovative, and secure. In particular, the White House makes clear its commitment to “*supporting a marketplace that harnesses the **benefits of AI to provide new opportunities for small businesses, workers, and entrepreneurs***” (emphasis added), and urges the SBA to support small businesses in responsibly adopting and deploying AI. See **Exhibit 4.i at p.2**. However, the President also points out that protections and responsible development of AI is crucial, and states: “*Such protections are especially important in critical fields like healthcare, financial services, education, housing, law, and transportation, where mistakes by or misuse of AI could harm patients, cost consumers or small businesses, or jeopardize safety or rights.*” See **Exhibit 4.ii at p.3**. It is therefore clear that the Administration is fully committed to supporting SMEs’ embrace AI and the benefits its responsible usage can have on several industries. The Petitioner’s proposed endeavor will effectively advance the core goals set by the White House in the AI Executive Order. Leveraging his extensive experience in the field, the Petitioner will develop and implement comprehensive training programs and optimization strategies for process improvement and data-driven decision-making, by integrating affordable technologies powered by artificial intelligence and robotic process automation (RPA). By equipping American and Latino entrepreneurs with these advanced tools, the Petitioner will contribute to fostering innovation, improving operational efficiency, and strengthening the domestic AI ecosystem. This effort also supports the national objective of promoting responsible AI deployment, ensuring that these technologies are accessible and used in a way that benefits businesses while safeguarding privacy and promoting ethical standards. In this sense, the Petitioner will guarantee that SMEs conduct a safe and responsible use of AI, safeguarding businesses and contributing to their digital transformation. This will enhance the digital experience and drive technological advancement throughout the SME sector. See **Exhibit 4.1**.

Moreover, according to the SBA, small businesses are the most important source of growth in the United States, making up most businesses, employers, and exporters, and creating two-thirds of net new jobs. See **Exhibit 4.ii**. In this context, digital transformation is imperative in today’s digital market. among the benefits digital transformation brings to SMEs, the SBA underlines:

- *A reduction in transaction and information costs*
 - *An increase in access to resources, including financing*
 - *More robust data analytics to identify opportunities and drive performance*
 - *Facilitates remote work, which can increase productivity, reduce costs, and increase access to talent.*
- Technology adoption may also increase access to trade opportunities for small businesses.*

See **Exhibit 4.iii**. However, the SBA points out that **only 38% of SMEs use specialized software in their business operation**, and that they face numerous challenges when adopting new emerging technologies, which **hinders their growth potential**. The SBA states that “*while small businesses have realized some gains from adopting new technologies, they generally lag larger businesses in the use of digital tools and continue to face barriers to digitalization*”. See **Exhibit 4.iii at p.6**. Furthermore, the SBA highlights the most common digital barriers faced by SMEs, including lack of knowledge and resource constraints. The Petitioner’s proposed endeavor will effectively help SMEs surpass these barriers, close the digital gap, and allow them to benefit from the significant

advantages of digital transformation. Considering that more than 60% of SMEs still do not use specialized software for their operations, there is an enormous opportunity for the Petitioner's proposed endeavor to fill that need for the benefit of the technological advancement of SMEs, fostering the pace of innovation in that crucial sector of the U.S. economy. Leveraging his experience in the field, the Petitioner will provide SMEs with customized AI-drive solutions fostering their digital transformation and addressing the growing need for digital tools to boost productivity. Through these customized solutions and process enhancement, the Petitioner will guarantee the proper adoption of technologies to ensure sustainable growth and competitiveness for SMEs, for the benefit of the entire sector and the overall U.S. economy. *See Exhibit 4.iv.*

Moreover, the U.S. General Services Administration developed a "**Guide to robotic process automation**" (RPA Playbook), which provides guidelines for federal agencies starting a new RPA program or evolving an existing one. The RPA Playbook focuses on how to enhance federal agencies' efficiency and effectiveness through RPA, emphasizing the need to build secure and scalable IT infrastructure, design streamlined security policies, and implement robust operational management frameworks to optimize processes and reduce errors. Although the RPA Playbook is crafted for the federal government entities, it clearly shows the Administration's commitment towards advancing the implementation of these useful technological tools to enhance productivity and efficiency. *See Exhibit 4.v.* The Petitioner's proposed endeavor will effectively extend and apply these principles to SMEs. By leveraging RPA technologies, the Petitioner seeks to automate their current processes, thereby increasing operational efficiency and growth potential. The Petitioner will help SMEs adapt to this changing landscape, fostering both innovation and resilience, advancing the Administration's goals of process improvement and efficiency, for an improved service delivery to the American people. This approach will not only support the growth of individual businesses but also contribute to the broader economic development of communities, ensuring that diverse entrepreneurs can thrive in the face of automation.

Additionally, the Petitioner's undertaking will provide U.S. SMEs with comprehensive support, enabling them to access the technology and training necessary to grow, develop, and position themselves competitively in a market dominated by large corporations. Thus, the Petitioner's endeavor **will assist the national government in its mission to reduce corporate consolidation, increase competition and provide benefits to consumers, workers, and small businesses.** *See Exhibit 4.vi.* In the fact sheet "*Executive Order on Promoting Competition in the American Economy*," the national executive branch has expressed its concern about the increase of corporate consolidation, stating that, in more than 75% of U.S. sectors, a smaller number of large companies control businesses, raise prices, make it more difficult for small businesses to enter and remain in the market, and offer worse conditions to workers. By offering SMEs a platform equipped with state-of-the-art technologies, increasing their technological know-how, and providing training for their workforce, the Petitioner's proposed endeavor will help reverse this situation. *See Id.* As such, Mr. Jimenez Montero's endeavor to further digital transformation and training solutions, specifically for RAP and AI technologies, brings significant value to the U.S. economy as it will enable U.S. businesses to improve productivity, save time and resources, and offer employees valuable upskilling opportunities in high-demand tools — key factors in remaining competitive in a fast-evolving digital economy.

The Petitioner's proposed endeavor is directly related to and in line with national interests outlined by the aforementioned initiatives and numerous government agencies. He intends to continue the development and improvement of his comprehensive training programs in order to increase access to quality training of innovative methodologies such as AI and RPA, and contribute to the digital transformation of SMEs, directly impacting their productivity, growth and competitiveness in the market.

3. *Documentary evidence that supports Petitioner's statements and establishes the endeavor has significant potential to employ US workers or has other substantial positive economic effects, particularly in an economically depressed area; Will Broadly enhance societal welfare.*

Similarly, implementing RPA can lead to significant cost savings for small businesses. By automating repetitive tasks, companies can reduce the time and resources spent on manual labor. This translates to lower operational expenses related to labor costs, such as salaries, overtime payments, and training. Additionally, RPA software for small businesses helps operate more efficiently, thereby optimizing resource utilization and reducing overhead costs. Over the next three years, a significant majority, comprising 78% of those who have already adopted RPA, anticipate a substantial increase in their investments in robotic process automation, as Deloitte reports. 53% of respondents have started the adoption of RPA, a number forecasted to rise to 72% within the next two years. If this tendency remains, RPA is guaranteed to achieve nearly universal adoption within the subsequent five years. By leveraging RPA, businesses can achieve higher productivity levels without the ongoing expenses associated with new employees' employment and onboarding. A frequently faced issue of small businesses lies in scaling operations to cater to growth or changes in demand. In such cases, RPA equips market newcomers with scalability by allowing them to quickly adjust automation processes to meet ever-evolving requirements. Robotization acts as a powerful tool that can handle boosted transaction volumes or extend into new markets, providing seamless scalability with no significant investments in infrastructure or manpower. *See Exhibit v.ii.* The Petitioner will develop and implement AI and RPA customized solutions that leverage these benefits for SMEs. In particular, the specialized software will allow SMEs to automate repetitive tasks with speed and accuracy, and his solutions will be easily scaled up or down to accommodate to changing business needs and volumes. Furthermore, by leveraging these technologies, the Petitioner's solutions will learn from data, identify patterns, and make predictions to the business owners, improving their decision-making process. As the Petitioner's will develop and implement comprehensive training programs and optimization strategies for process improvements, this will enable organizations to make data-driven decisions and optimize processes. Overall, the Petitioner's AI-driven solutions will, among others, improve data processing, cognitive automation, decision-making, and process automation, resulting in significant enhancement of the business experience of SMEs across the United States. *See Id.*

Furthermore, there are specific advantages of incorporating AI and RPA into business processes, which are redefining efficiency and setting new standards for innovation. Among the key benefits of AI RPA, we point out:

*AI-powered Robotic Process Automation has the potential to **reduce operational costs** for businesses significantly. By automating repetitive and routine tasks, companies can save substantially on labor costs. Moreover, by **running processes faster and more efficiently**, you minimize the time and resources required. This efficiency translates to direct cost savings, as businesses can optimize the use of both human and machine resources, ensuring they are deployed where they add the most value. [...]*

*One of the standout benefits of AI Robotic Process Automation is its ability to **deliver accurate results consistently**. Robots, unlike humans, perform tasks with a level of precision that ensures consistency every single time. They are not prone to the fatigue or distractions that can lead to human errors. Additionally, with real-time data validation capabilities, AI can **immediately identify and correct discrepancies**. This ensures that the output is of the highest quality. [...]*

*In today's digital age, customer expectations are higher than ever. AI RPA plays a pivotal role in meeting these expectations by offering **24/7 service capabilities**. Robots can operate continuously, ensuring that customers receive timely service. Coupled with AI's ability to analyze customer data, businesses can provide a **highly personalized experience**. It is easier to offer tailored recommendations and solutions. Therefore, her level of personalization and instant response significantly enhances the overall customer experience. [...]*

See *Exhibit 4.viii*. The Petitioner's proposed endeavor is specifically directed to promote and democratize these significant benefits across SMEs in the retail sector. Through the development of customized AI and RPA solutions, the Petitioner will ensure SMEs optimize process times and accuracy, and correct mistakes immediately. This will result in cost reductions and an increase in efficiency. Furthermore, by incorporating RPA into customer service, the Petitioner will allow SMEs to improve their service capabilities, offering personalized experiences to their customers without incurring significant costs. The implementation of the customized solutions provided by the Petitioner will therefore benefit SMEs and their client base and communities through improved service delivery. *See Id.*

Additionally, digitalization offers a range of opportunities for SMEs to improve performance, spur innovation, enhance productivity, and compete on a more even footing with larger firms. However, smaller businesses continue to lag in the digital transformation. This is primarily due to low awareness, insufficient internal resources, and skill deficiencies. Recent economic shocks and

volatility have had significant impacts on SME and entrepreneurship activity and tested the limits of SME adaptability. Digital technologies, such as robotics process automation (RPA) and artificial intelligence (AI), can help SMEs absorb adverse impacts, innovate and adapt in their offers and business models in response to market changes. **The OECD reports that the smaller the firm, the higher the barriers to digital transformation.** Additionally, skills shortages weigh on SMEs' ability to adapt and transform. Continuous upskilling and re-skilling are essential in a rapidly evolving digital landscape, particularly with the rise of data-driven business models, but most SMEs lack awareness and understanding for proper data management and digital security. The Petitioner's proposed endeavor directly addresses this internal skills gap by providing external advice and specialized training solutions to SMEs to help them navigate digitalization effectively. Understanding the complexity of digital transformations and leveraging his experience in the field, the Petitioner will guide organizations through the adoption of digital technologies and AI-driven solutions with ongoing assistance that will result in efficiency gains and process optimization. By embracing AI and RPA into existing processes, SMEs will enhance productivity levels, foster growth, and remain competitive in a digital market. See *Exhibit 4.ix*.

We must note that with the initial petition, the **Petitioner submitted an independent assessment letter** that was not addressed in the request, seemingly being discarded by the officer without a reasonable explanation. In this letter, independent expert and software engineer Mr. Jonathan Rodriguez provided a comprehensive assessment of the Petitioner's endeavor **and its implications in America's economy and job creation**. Analyzing Mr. Jimenez Montero's proposal, he writes:

This initiative will not only improve operational efficiency and reduce costs but also boost competitiveness and growth of these enterprises, supporting the inclusion of Latino-owned businesses in the U.S. market. Consequently, it will promote economic development and job creation, thereby enhancing and strengthening the overall business landscape in the United States and positively benefit the American economy.

See *Initial Petition Exhibit 22*. Though not directly requested by the officer, the Petitioner is including additional objective documentary evidence to demonstrate the **broader impact of his endeavor**, particularly in economically depressed areas. As such, the Petitioner is enclosing an **independent letter** from field expert Glenda Darce Huete, confirming the potential prospective impact of the undertaking beyond the Petitioner's prospective clients or employers. In her letter, Ms. Darce Huarte states that she has reviewed the Petitioner's endeavor and writes:

The initiative aims to save time and resources, enhance competitiveness, and provide employees with upskilling opportunities. It focuses on American, Latin, and minority owned SMEs to maximize their operational efficiency and growth potential. Through his efforts and endeavor, Oscar will benefit the United States because his proposed endeavor can drive economic growth, foster innovation, enhance competitiveness, and support minority entrepreneurship.

See **Exhibit 7**. Similarly, Machine Learning Engineer Dario Rios Navarro confirms that the Petitioner's endeavor "*will contribute to [SMEs] in maximizing their operational efficiency and growth potential, saving time and resources, enhancing competitiveness, and offering to employees valuable upskilling opportunities in high-demand tools.*" See **Exhibit 8**. In the same line, Fotios Ebeoglou, IT Product Lead at Kuehne+ Nagel addresses the implications of the Petitioner's endeavor and as a field expert confirms that it will have "*a meaningful impact in our field and will contribute significantly to the United States' economy and technological leadership.*" Lastly, he concludes that the Petitioner's contributions "*will undoubtedly enhance the United States' competitiveness in these critical technological domains.*" See **Exhibit 9**. As such, the Petitioner has demonstrated that his endeavor stands to impact the broader field or industry, beyond his prospective clients or employees in the United States.

In evaluating the national importance of the Petitioner's proposed endeavor, we strongly urge USCIS to consider the totality of the evidence provided with the original filing and the instant filing as it comprehensively outlines the national importance of the Petitioner's proposed endeavor. The evidence demonstrates beyond a preponderance of the evidence that the endeavor is of national importance.

II. The Petitioner is well-positioned to advance his proposed endeavor:

Much like the assessment provided for the first prong, ample evidence was provided with the initial petition to demonstrate that the Petitioner is well-positioned to advance his proposed endeavor in line with the factors directly outlined in *Dhanasar*. Notwithstanding, the Request does contemplate some of the evidence presented by the Petitioner for this prong, but it falls short of contemplating the entirety of the evidence submitted for demonstrating the Petitioner is well positioned to advance the proposed endeavor. The content of the Request would appear to almost exclusively focus upon the Petitioner's letters of recommendation and only in the context of his record of success. Also, we note that said letters were superficially considered and in an isolated manner which served to the direct disadvantage of the Petitioner in the analysis of his satisfaction of this prong.

Additionally, we must reiterate that the content of the RFE in this prong does not comment on the unmet requirements, nor does it properly describe the documents used to review the case, its deficiencies, or what sort of information is missing from the case to meet these criteria, beyond analyzing the letters of recommendation. **This represents a significant deficiency within the adjudicatory process. No explanation has been provided to understand the reasoning of the officer in challenging the Petitioner's satisfaction of the requested classification beyond the letters. Simply stating that the Petitioner did not provide independent letters and asking the Petitioner to submit additional evidence does not mean that the adjudicating officer has duly complied with their duty to review and analyze all the evidence presented and explain the reasoning employed in accordance with the applicable regulations and the Policy Manual.** Without clear guidance on the supposed insufficiencies within the evidence submitted it is

materially impossible for the Petitioner to understand the assessment criteria and respond to this RFE with supplemental evidence that corroborates that he/she qualifies as an advanced degree professional.

Please find additional evidence to demonstrate the Petitioner is well-positioned to advance his proposed endeavor. Attached please find: Updated Model Plan; Financial support documents: Property registration – Value: ₡71,000,000, currency conversion USD 138,343.07; Property registration – Value: ₡18,000,000.0, currency conversion USD 35,072.892; Bank Statement ASEOESTE – Balance: ₡11,067,262.4, currency conversion USD 21,801.454; Bank Statement Banco de Costa Rica – Balance: ₡8,053,836.21, currency conversion USD 15,864.711; Letter of Recommendation from Glenda Darce Huete, former senior IT Project Manager at Intel; Letter of Recommendation from Dario Rios Navarro, Machine Learning Engineer at Western Union; and supplementary letter of recommendation from Fotios Ebeoglou, IT Product Lead at Kuehne+Nagel. *See Exhibits 4-9.*

A. The Petitioner's education, skills, knowledge, and record of success

Alongside the initial petition, the Petitioner provided evidence demonstrating that he received his bachelor's degree in Computer Systems and Education Sciences from the Universidad Panamericana and Universidad Castro Carazo in Costa Rica. *See Initial Petition Exhibit 8-9.* This is further supported by the Credential Evaluation Report which noted that his foreign degree is the equivalent to a U.S. bachelor's degree in computer engineering. *See Initial Petition Exhibit 7.* Additionally, the Petitioner has provided ample evidence of his work experience totaling more than 5 years in the field of endeavor as full-time DevOps engineer from 2019 to 2020 at Kuehne + Nagel, and as a full-time Staff Software Engineer from 2020 to date. *See Initial Petition Exhibits 10-11*

Furthermore, the Petitioner has contributed positively to his field of endeavor. As a DevOps Engineer, the Petitioner performed as Automation DevOps Engineer, supporting the global automation RPA development teams from SSC Costa Rica, SSC Belgrade, United States, Canada and SSC Greece and SSC Philippines. He also worked as an Infrastructure administrator installing and evaluating software and applications to be used in-house, as part of various automation processes, in order to minimize day-to-day operations. Mr. Jimenez Montero has also provided training and support on the various automations he developed further contributing to the digital transformation of the company. *See Initial Petition Exhibit 17.* Additionally, as a Staff Software Engineer, he was in charge of building and automating high-quality data science pipelines that power key business applications with advanced analytics, AI, and machine learning. The responsibilities of this role included converting data/machine learning pipelines into scalable pipelines based on the infrastructure available, enabling production models across the ML lifecycle, performance metrics, and model monitoring dashboards. He was also in charge of model

retraining, and model technical evaluation & business validation, working with stakeholders to assist with ML pipeline for related technical issues and supporting modeling infrastructure needs to monitor robots' performance and mitigate possible affectations. Moreover, he developed and maintained data analytics, and alerts for processes, keeping track of entire operations. Lastly, he collaborated and supported the automation teams, providing solutions on development tools and useful appliances through coaching and training support for the automation teams. *See Id.*

As such, it is clear that his work has led to improvements in the automation and digital transformation of SMEs. The statements made by the Petitioner are directly corroborated by the letters of recommendation provided in the initial petition supporting his experience in the field. *See Initial Petition Exhibit 22.*

We must note that USCIS claims that the letters submitted “*do not appear to be from independent experts in the field [...] since the individuals had previously worked with you, they would not be considered independent.*” **This is a concerning statement that calls into question if the officer provided a thorough assessment of the evidence provided.** Mr. Jimenez Montero, under **Exhibit 22** of the initial petition **submitted an independent letter of recommendation** from Mr. Jonathan Rodriguez, Software Engineer in Big Data at Western Union that provided a professional expert analysis of the Petitioner's qualifications and achievements in the field, confirming his “*proficiency and extensive experience*” in the implementation of Robotic Process Automation and Artificial Intelligence technologies, considering him the optimal professional to successfully implement his proposal in the United States. Mr. Rodriguez highlights several accomplishments that make the Petitioner well-positioned to advance the endeavor, such as the implementation of an automated system for calculating and generating monthly reports related to Full-Time Equivalent (FTE) crucial for evaluating the savings in human resources generated by automated processes compared to tasks performed by human personnel. To achieve this, the Petitioner utilized UiPath, a RPA tool that allows you to analyze and optimize their resources more effectively, resulting in significant cost reductions and improved report accuracy. Mr. Rodriguez confirms that “*with this type of analysis, he not only provided a clear view of the impact of automation on operational efficiency, but also helped companies identify specific areas where greater savings can be achieved.*” *See Initial Petition Exhibit 22.*

Another significant achievement highlighted by the signatory is the digitalization of handwritten forms where Mr. Rodriguez credits the Petitioner with the development of a robot utilizing RPA methodologies that employs text recognition to transform handwritten documents into digital forms, facilitating data integration and enhancing the efficiency of information management. Thanks to this approach, Mr. Rodriguez confirms that the Petitioner streamlined digitalization processes and guaranteed higher accuracy in data conversion, reducing unnecessary time to complete tasks. Lastly, Mr. Rodriguez writes that the Petitioner's “*proficiency in developing innovative solutions and his dedication to digital inclusion uniquely qualify him to implement his project to optimize and automate processes and enhance decision making in small and medium-sized enterprises.*” *See Id.*

Additionally, we are attaching 3 new letters of recommendation that highlights the Petitioner's qualifications and achievements that make him well-positioned to advance his endeavor in the United States. *See Exhibits 7-9.* For instance, Senior IT Program Manager at Intel Glenda Darce Huete has reviewed the Petitioner's credentials and accomplishments in RPA and AI technologies and provides an **independent assessment** confirming he has broadly impacted the field. As evidence of his impact in the field, Ms. Darce Huete highlights that the Petitioner was responsible for building and automating high-quality data science pipelines that power key business applications with advanced analytics, AI and machine learning, automating complex workflows, improving efficiency and reducing operational costs of businesses. Additionally, the signatory confirms that the Petitioner has mentored junior developers and contributed to the design and implementation of scalable software solutions within his roles as Senior Software Developer and Staff Software Engineer. Moreover, as a Certified SAFe Product Owner and Product Manager, Ms. Darce Huete confirms that the Petitioner has successfully managed product backlogs, prioritized features, and ensured alignment with business goals. Also, as a certified Scrum Master, this credential has enabled him to lead agile teams and drive continuous improvement in project delivery. *See Exhibit 7.*

Furthermore, Machine Learning Engineer at Western Union Dario Rios Navarro attests to the Petitioner's record of success in the field utilizing RPA testing strategies, reducing time for testing and improving web application performances during his tenure as a Senior Developer and Scrum Master. Serving as RPA DevOps engineer, the Petitioner supported global RPA development teams from Costa Rica, United States, Canada, Greece and Philippines, as an Infrastructure administrator performing task including, installing and evaluating software and applications to be used in-house, as part of various automation processes, in order to minimize day to day operation effort. Additionally, he created systems alerts using Kibana and Grafana to monitor robots' performance and mitigate possible affectations, tracking the whole automation operation, reducing downtime and the response time by 45%. Mr. Rios Navarro also confirms the Petitioner's track record and discusses how the Petitioner is a mentor, training and supporting employees in several automation processes. Lastly, as a Machine Learning Engineer and part of the Data Science Industrialization team charged with building and automating high-quality data science pipelines that power key business applications with an advanced analytics, artificial intelligence and machine learning, he was responsible for supporting cloud infrastructure, improving the model's deployment by creating in-house solutions, reducing the deployment by 60%. *See Exhibit 8.*

Lastly, IT Product Lead at Kuehne + Nagel Fotios Ebeoglou highlights the Petitioner's influence on his organization describing it as "*transformative*". Listing some key contributions and achievements demonstrating the Petitioner's expertise, he confirms that the Petitioner led several pivotal projects, including the design and implementation of a sophisticated RPA and AI platform environment. He also significantly optimized robot deployment processes by reducing approval times by 50%. Creating a monitoring system that detects and addresses performance issues in real time, the Petitioner reduced downtime by 55%. Specifically, Mr. Ebeoglou confirms that the Petitioner successfully trained new team members in advanced technologies, ensuring their seamless adoption and enhancing team productivity. Leveraging his expertise in agile

methodologies, the Petitioner also **streamlined workflows and enhanced process efficiency, resulting in improved team collaboration and organizational flow.** As a Machine Learning Engineer, the signatory confirms that the Petitioner played a crucial role in supporting cloud infrastructure and **developing high quality automated data science pipelines,** instrumental in identifying various types of fraudulent activities in financial transactions. Lastly, in his capacity as a support engineer, the Petitioner's analytics development work **laid the foundation for effective AI and ML implementations** demonstrating his ability to bridge technical challenges and business needs effectively. *See Exhibit 9.*

It is therefore clear that the Petitioner has a record of success in a similar endeavor, promoting the digital transformation of businesses and enhancing automation practices to achieve operational efficiency.

We also note that the well-defined standard for assessing the Petitioner's satisfaction of the second prong is a preponderance of the evidence standard. This means that the petitioner need only provide sufficient evidence to demonstrate that there is a better than 50% chance that they meet the prong and factor in order for it to be considered satisfied. The standard does not permit an individual to set a bar higher than 50% as exposed in the legal precedents outlined in the first prong analysis. This also means that the totality of the evidence must be considered in a collective manner in order to reach a conclusion as to whether or not the petitioner meets the requisite requirements of the criterion. A request that examines the evidence in isolated or piecemeal fashions containing inherent self-contradictions again lends to the belief that the evidence was not correctly assessed according to the precedent case law and government regulations, which serves to the direct disadvantage of the Petitioner and suggests an abuse of discretion on the part of the adjudicator. We strongly urge USCIS to thoroughly review the entirety of the evidence submitted with the initial petition and the instant response as a collective and not in isolated manners.

The defined standard for the second Prong is further outlined in *Dhanasar* that a petitioner must be "*Well-positioned to advance the proposed endeavor*" not best positioned, atop their respective field. Several instances of language in the Request would appear that the adjudicating officer utilized a standard beyond what is required by the precedent case decision and the relevant regulations. While it is acknowledged that a degree of discretion is involved in every case adjudication, this does not mean that the officer may supplant the well-defined standard of law in order to place a higher or novel bar to meet. In line with *Dhanasar*, the Petitioner submitted evidence of his degrees and equivalency reports, various conference participations, professional licensures, the Petitioner's supplementary business plan which outlines his record of success both within the field and in line with his proposed endeavor, and the various certifications he has in his field and in line with his proposed endeavor in order to establish his education, skills, knowledge, and record of success.

The Petitioner's background is consistent with the proposed endeavor, and his work has already contributed towards the improvement of automation and operational efficiency of SMEs. The above-mentioned letters and documentary evidence, in conjunction with the ample evidence presented with the initial filing, serves to support by a preponderance of the evidence that the Petitioner has a demonstrated record of success in his field.

The evidence demonstrates the Petitioner's education, skills, knowledge, and record of success sufficient to qualify him for the benefit sought as indicated by the Request, and as such it should logically be sufficient to serve as probative evidence, by a preponderance of the evidence, of his satisfaction of this factor for prong two.

B. The Petitioner's model or plan for future activities

The AAO in *Dhanasar* established that a petitioner may submit a “*model or plan for future activities*” to establish whether the beneficiary is well-positioned to advance the proposed endeavor. The precedent decision does not define the method by which an individual may present the plan for furthering the proposed endeavor. The plain language of *Dhanasar* indicates that one must simply provide a plan for future activities.

The Petitioner's plans for creating novel and dynamic approaches to comprehensive training programs that specialize in artificial intelligence and robot process automation is a strategic approach to addressing the digital transformation urgency of SMEs. By working with other experienced professionals in the industry, the Petitioner will share knowledge and expertise to create more comprehensive and effective solutions to ineffective process automation in the nation. See **Exhibit 5**. The Petitioner will further his proposed endeavor through comprehensive training programs and optimization strategies for process improvement and data-driven decision-making, by integrating affordable technologies powered by artificial intelligence (AI) and robotic process automation (RPA). Through equipping U.S. companies and their workforce with essential digital skills and promoting technological advancements, he will bolster their competitiveness in both U.S. and global markets. See *Id.*

Additionally, the Petitioner plans to advance the endeavor in the U.S. as explained in the supplementary business plan that we are attaching herein as **Exhibit 5**. This plan details his strategies for working in the U.S., plans for advancement of the business, as well as a feasible financial plan.

Since the Petitioner already has a number of interested clients in his consultant services, he will focus on working with these initial clients according to the established proposal to achieve successful implementation of the methodology and obtain the expected results in a short period of time. He will advance his endeavor through starting his own business as an independent consultant

d to help U.S. small and medium-sized companies adopt cutting-edge technology to improve their internal processes. To improve the chances of success, he will start his business in Caldwell, Idaho. For the client located in Florida, as well as any other new clients, he will temporarily move to their location for the necessary time to conduct a proper evaluation in person, implementation, and follow-up as required. *See Id.*

The Petitioner estimates that an evaluation, improvement proposal, and implementation of a solution based on RPA and/or AI technology, for medium and high complexity conditions, takes an estimated average of 8-10 weeks, approximately 400 hours, at an average cost of \$100 per hour. This includes some transportation expenses and the use of technological tools. Any tool outside the range of open-source code is covered by the client, so these expenses specifically correspond to the services offered. Due to the nature of the service offered, which is mostly provided on-site, there is no estimated need for an office in the first few years, and minor expenses are expected in legal or inventory matters. *See Id.*

The Petitioner has the necessary funds to conduct his endeavor. He is herein providing two property registrations valued at \$138,343.07 and \$35,072.89, as well as two bank statements, one from ASEOSTE for the USD equivalent of \$21,801.45 and another one from Banco de Costa Rica for the USD equivalent of \$15,864.81. *See Exhibit 6.* This demonstrates that the Petitioner has the available funds to conduct his endeavor in the United States.

The evidence demonstrates beyond a preponderance of the evidence that the Petitioner is well-positioned to advance his proposed endeavor based on the plan for future activities.

C. The Petitioner's progress towards achieving his proposed endeavor.

The *Dhanasar* decision states that “*any progress towards achieving the proposed endeavor*,” serves to indicate that the petitioner is well-positioned to advance the proposed endeavor. As evidence of progress toward the endeavor, *See Exhibits 5-9; See Initial Petition Exhibits 14-47.*

Since this factor takes into account a great deal of evidence that has already been discussed above, it should not be necessary to reiterate the same arguments accordingly. In totality, the Petitioner's education, experience, and expertise in their field, and progress made toward establishing his endeavor in the United States both throughout his career and with documented U.S. interest, make him well-positioned to advance the endeavor. We do again encourage USCIS to review the evidence in its entirety which clearly demonstrates by a preponderance of the evidence that the Petitioner has made progress towards achieving his proposed endeavor.

D. There exists a demonstrated interest in the Petitioner's proposed endeavor.

The final factor specifically enumerated in *Dhanasar* is “*The interest of potential customers, users, investors, or other relevant entities or individuals.*” The precedent case does not define the level

of interest, nor does it require a lengthy list of potential customers, users, investors, or other relevant entities or individuals. The plain language requires that one must simply establish parties are interested in the petitioner's proposed endeavor by a preponderance of the evidence.

We must note that the Officer did not provide any assessment of the submitted letters of interest and did not explain any deficiency with their probatory value.

The Petitioner submitted sufficient evidence of U.S. interest in his proposed endeavor services, as demonstrated by the letter of interest from First, Don Suggs, CEO of Rhino Metals Inc from Calowell, Idaho demonstrated his interest in utilizing the Petitioner's services for his truck division, Fox2 Transport LLC, and his manufacturing division, Rhino Metals, Inc and Criterion Trailers LLC, to streamline processes across their divisions, improving efficiency and competitiveness to capitalize the vast opportunities of AI digital transformation. *See Initial Petition Exhibit 46.*

Additionally, Jeison Bennet on behalf of Nort Atlantic International Ocean Carrier Inc. expresses his interest in integrating AI and automation solutions into their cargo tracking, customer services, and inventory management, to streamline processes, enhance efficiency and driving a greater value for their customers and stakeholders. *See Initial Petition Exhibit 47.*

As such, the Petitioner has provided sufficient evidence of U.S. interest in utilizing his services, which heavily incorporate his education, experience, and skill in utilizing RPA and AI solutions to further process improvements, in furtherance of his proposed endeavor. We respectfully request that USCIS review the evidence in its totality when analyzing the Petitioner's qualification for this criterion.

III. On Balance, it is beneficial for the United States to waive the requirement of a job offer and, thus, of a labor certification:

A. It is impractical to require a job offer and a labor certificate.

The Petitioner intends to continue and expand his business in the U.S. and plans to use his expertise in field of endeavor to contribute to the success of SMEs. The dynamic role of the Petitioner in advancing this endeavor makes the labor certification process impractical. The labor certificate process is designed for standard job opportunities. Here, the Petitioner's endeavor includes technical aspects of the field of endeavor in conjunction with the executive skills needed to advance the endeavor, business skills to provide effective consulting services and the language and cultural skills to serve the Latino community. This unique skill set is not easily adapted to the labor certificate process. *See Exhibit 5.*

B. Even if other qualified U.S. workers are available, the U.S. will benefit from the Petitioner's contributions.

The U.S. has a stated interest in the development of the Petitioner's endeavor, and in the unique and dynamic skill set the Petitioner brings. *See Exhibits 3.1, 3.2, 3.4 and 4.i – 4.vi.* This endeavor brings professional expertise in the field of endeavor with the Petitioner's entrepreneurial advancement plans, along with the cultural and business acumen.

C. It is urgent to the national interest that the petition be approved without a labor certificate.

With the emergence and rapidly growing popularity of AI-assisted RPA design and delivery, robust standards and standardization are more important than ever. The most urgent reason RPA leaders will need to implement stringent RPA standards and standardization policies is that automation production is going to accelerate and be democratized. Beyond controlling and monitoring the automations business users are producing with the help of AI-assisted RPA design and delivery, RPA standards and standardization are necessary to ensure quality and reliability with even highly technical employees. Strong RPA standards, best practices, and standardization ensure that automations are high-quality and built to be resilient so that they don't affect the ROI (return on investment) that they were implemented to produce. As RPA life cycles evolve, so will the complexity of the business processes being automated, demanding the need for scalable RPA solutions. RPA standardization provides a solid foundation that supports scaling RPA practices and applying automation more broadly across the business without compromising performance. Moreover, RPA standards also make integrating RPA technologies with existing systems in a company's enterprise architecture easier. A standardized approach to automation ensures that different RPA solutions are interoperable so they can communicate and work together seamlessly, thereby enhancing overall operational efficiency. *See Exhibit 4.x.* As such, the need for incorporating robot process automations into businesses is more pressing now than ever. By designing and implementing training programs and optimization strategies that incorporate Robotics Process Automation (RPA) and AI technologies to the need for SMEs to enhance their operational efficiency and competitiveness, the Petitioner will address the industry's priorities and the urgent need for upskilling workers in AI and automation technologies.

D. There is a potential for U.S. job creation.

The Petitioner has provided evidence of U.S. market growth through his supplementary business plan submitted herein. *See Exhibits 5.*

E. There will be no adverse effects on U.S. workers if the NIW is granted.

The Petitioner will be self-employed in a capacity that does not otherwise negatively impact the labor supply of the United States, a factor indicated for consideration in the RFE. *See Exhibit 5.*

Based on the totality of the evidence submitted with the initial filing and this response, the Petitioner satisfies the third prong of *Dhanasar* by a preponderance of the evidence.

IV. Conclusion:

The totality of the evidence submitted with the original filing and with this response demonstrates that the Petitioner meets the criteria for a national interest waiver. The evidence demonstrates beyond a preponderance of the evidence that the proposed endeavor has both substantial merit and national importance, that the Petitioner well-positioned to advance the proposed endeavor, and on balance, it would be beneficial to the U.S. to waive the requirements of a job offer and, thus, of a labor certification. Therefore, we respectfully request that the USCIS approve this petition.

Sincerely,

Jessica Gandhi, Esq.

Attorney at Law

Illinois Bar # 6319182

Colombo & Hurd, P.L.