

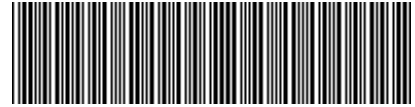
October 9, 2024

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
P.O. Box 82521  
Lincoln, NE 68501-2521



U.S. Citizenship  
and Immigration  
Services

OSCAR JIMENEZ MONTERO  
c/o COLOMBO AND HURD PL  
63 PUTNAM ST. STE 202  
SARATOGA SPRINGS, NY 12866



IOE0927336924

RE: OSCAR JIMENEZ MONTERO  
I-140, Immigrant Petition for Alien Worker

**REQUEST FOR EVIDENCE**

**\*\*PREMIUM PROCESSING\*\***

**IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THE ORIGINAL NOTICE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE.**

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence listed on the attached page(s). Include duplicate copies if you are requesting consular notification.

**Your response must be received in this office by January 4, 2025.**

Please note that you have been allotted the maximum period allowed for responding to an RFE. The time period for responding cannot be extended. 8 Code of Federal Regulations (8 CFR) 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. See 8 CFR 103.2(b)(11).

If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

Processing of your I-140 will resume upon receipt of your response. If you have not heard from USCIS within **20 days of responding**, you may contact the USCIS Contact Center at **1-866-315-5718**. If you are hearing impaired, please call the USCIS Contact Center TDD at **1-800-767-1833**.

You have filed Form I-140, Immigrant Petition for Alien Worker, on behalf of yourself, OSCAR JIMENEZ MONTERO, a self-petitioner seeking immigrant classification as a member of a profession holding an advanced degree (E21) on August 22, 2024. In addition, you have indicated that you are seeking a National Interest Waiver of the job offer requirement. The priority date for this petition is August 22, 2024.

The beneficiary intends to work as a systems engineering and artificial intelligence specialist.

In order to establish eligibility, the petitioner must establish that:

- The beneficiary qualifies for the requested classification; and
- An exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.

### **E21 Advanced Degree**

Title 8, Code of Federal Regulations, Section 204.5(k)(3)(i) states that:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

1. An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
2. An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner provided a copy of a Bachelor in computer systems from “Universidad Panamericana” dated November 27, 2013, accompanied by an evaluation of academics to show the equivalent of a U.S. Bachelor of Science degree in computer engineering.

In order to assess the equivalency of the beneficiary's foreign degree, USCIS has also reviewed the Electronic Database for Global Education (EDGE) database ([www.aacrao.org/edge](http://www.aacrao.org/edge)) on October 9, 2024. EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO's mission is to advance and support a richly diverse, globally interconnected community of higher education professionals as well as the institutions, organizations, and learners they serve through its resources, leadership, and advocacy. AACRAO EDGE utilizes the expertise of the International Education Standards Council (IESC) to review and update their recommendations. The Council is composed of professionals who have worked in higher education as well as private credential evaluation firms, to instill confidence that the recommendations presented are appropriate, thorough, and representative of the varied viewpoints held within higher education. <https://www.aacrao.org/resources/AACRAO-International/about-edge> In the section related to the Costa Rica educational system, EDGE provides that the Titulo de Bachillerato en Sistemas de Computacion represents attainment of a level of education comparable to a bachelor's degree in the United States. The petitioner also provided evidence in the form of letters from current or former employer(s) showing that the beneficiary has at least five years of progressive post-baccalaureate experience in the specialty.

As such, he has demonstrated that he is a professional holding the foreign equivalent of a U.S. Baccalaureate degree plus at least five years of progressive, post baccalaureate experience in the specialty.

### **National Interest Waiver**

USCIS has designated Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) (“Dhanasar”) as a precedent decision. That decision rescinded the earlier precedent decision, Matter of New York State Dep’t of Transp. (“NYSDOT”), 22 I&N Dec. 215 (Acting Assoc. Comm’r 1998), regarding national interest waivers under Section 203(b)(2)(B)(i) of the Immigration and Nationality Act, and introduced a new three-prong test for determining eligibility. Under Dhanasar, USCIS may grant a national interest waiver as a matter of discretion if the petitioner demonstrates by a preponderance of the evidence that:

- The beneficiary’s proposed endeavor has both substantial merit and national importance;
- The beneficiary is well positioned to advance the proposed endeavor; and
- On balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion. The evidence does not establish that all of the prongs of Dhanasar have been met. Therefore, USCIS requests additional evidence.

### **Dhanasar Prong 1 - Substantial merit**

On the Form I-140, the petitioner provided a job title of systems engineering and artificial intelligence specialist. A counsel statement was submitted, “The Petitioner’s proposed endeavor is to develop training programs and comprehensive optimization strategies for process automation and data-driven decision making for American and Latino owned small and medium-sized enterprises (SMEs). He will achieve this by integrating streamlined business processes with Robotics Process Automation (RPA) and AI technologies. He will collect, analyze, and interpret data to provide valuable insights and guide decision-making processes across various facets of SME operations.”

You submitted the following to establish that the beneficiary meets the E21 classification and the three prongs’ requirements:

- ETA Form 750 B
- Counsel statement
- Personal statement
- Evaluation of academics
- Bachelor degree and transcripts
- Employment letters
- Various articles
- Resume
- Recommendation letters
- Bank statement

- Letter of interest
- Certificates
- Membership
- Other immigration documents

The documentary evidence submitted supports the beneficiary's statements that the proposed endeavor has substantial merit in an area such as business, entrepreneurialism, science, technology, culture, health, education, the arts, or social sciences. Therefore, it has been established that the proposed endeavor is of substantial merit.

### **Dhanasar Prong 1 - National in scope**

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Counsel indicates that "The proposed endeavor has national importance because it addresses a matter that has been explicitly supported by the U.S. government through numerous regulations and initiatives. His undertaking will result in broad and significant benefits and, thus, merits USCIS approval."

The evidence submitted does not support the petitioner's statements that the proposed endeavor will have potential prospective impact, such as evidence that the endeavor:

- Will have broader implications, or national or global implications within a particular field;
- Has significant potential to employ U.S. workers;
- Will have substantial positive economic effects, particularly in an economically depressed area;
- Will broadly enhance societal welfare; or
- Will broadly enhance cultural or artistic enrichment.

Please submit evidence to establish that the petitioner's proposed endeavor has national importance.

### **Dhanasar Prong 2 - Well positioned to advance the proposed endeavor**

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether the petitioner is well positioned to advance the 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.

The evidence submitted is not sufficient to establish you are well positioned to advance the proposed endeavor in the United States. You submitted three letters of recommendation. While the letters are highly complementary of your skills, the letters do not appear to be from independent experts in the field. You submitted no other evidence of interest in your endeavor by other relevant individuals or entities within your field of endeavor. Your current and former colleagues may be considered experts in the field, but since the individuals had previously worked with you, they would not be considered independent.

Submit evidence to establish you are well positioned to advance the proposed endeavor in the United States. The evidence must show you have a measurable record of success in your endeavor, a business model or plan for your work in the United States, progress towards achieving your endeavor in the United States, financial support to establish such an endeavor in the United States, and a level of interest by relevant entities and individuals in the United States.

Evidence which best establishes that you are well positioned to advance the proposed endeavor will document your qualifications (skills, experience and track record), support (financial and otherwise) and commitment (plans and progress) to drive the endeavor forward, and will support projections of future work in the proposed endeavor. USCIS provides the following non-exhaustive lists of factors and supporting evidence for your benefit. However, there is no need to resubmit evidence that you have already submitted. If you wish to highlight evidence already submitted, please specifically reference the evidence in a written statement. Do not resubmit evidence that you have already submitted.

USCIS may consider factors including, but not limited to, the following:

- The petitioner's education, skills, knowledge, and record of success in related or similar efforts:
  - To show a petitioner's education, skills, knowledge, and record of success in related or similar efforts, the petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
    - Degrees, certificates, or licenses in the field;
    - Patents, trademarks, or copyrights owned by the petitioner;
    - Letters from experts in the petitioner's field, describing the petitioner's past achievements and providing specific examples of how the petitioner is well positioned to advance his or her endeavor. Testimonial letters should include information about the expert's own credentials, such as a curriculum vitae;
    - Published articles and/or media reports about the petitioner's achievements or current work;
    - Documentation demonstrating a strong citation history;
    - Evidence that the petitioner's work has influenced his or her field of endeavor;
    - Evidence demonstrating the petitioner has a leading, critical or indispensable role in the endeavor or similar endeavors; and
    - Evidence showing that the petitioner's past inventions or innovations have been used or licensed by others in the field.
- A model or plan for future activities:
  - To show a model or plan for future activities, the petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
    - A plan describing how the petitioner intends to continue his or her work in the United States;
    - A detailed business model, when appropriate;
    - Correspondence from prospective/potential employers, clients or customers; and
    - Documentation reflecting feasible plans for financial support.
- Any progress towards achieving the proposed endeavor:
  - To show progress towards achieving the proposed endeavor, a petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
    - Evidence of grants the petitioner has received listing the amount and terms of the grants, as well as the grantees;
    - Copies of contracts, agreements, or licenses resulting from the proposed endeavor or otherwise demonstrating the petitioner is well positioned to advance the

- proposed endeavor;
  - ❑ Evidence of achievements that the petitioner intends to build upon or further develop (including the types of documentation listed under “petitioner’s education, skills, knowledge, and record of success in related or similar efforts”); and
  - ❑ Evidence demonstrating the petitioner has a leading, critical or indispensable role in the endeavor.
- The interest of potential customers, users, investors, or other relevant entities or individuals:
    - To show interest of potential customers, investors, or other relevant individuals, a petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
      - ❑ Letters from a government entity demonstrating its interest in the proposed endeavor;
      - ❑ Evidence that the petitioner has received investment from U.S. investors, such as venture capital firms, angel investors, or start-up accelerators, in amounts that are appropriate to the relevant endeavor;
      - ❑ Evidence that the petitioner has received awards, grants, or other indications of relevant non-monetary support (for e.g., using facilities free of charge, etc.) from Federal, State, or local government entities with authority over the field of endeavor;
      - ❑ Evidence demonstrating how the petitioner’s work is being used by others, such as:
        - Contracts with companies using products, projects, or services that the petitioner developed or assisted in developing;
        - Documents showing licensed technology or other procedural or technological advancements developed in whole or in part by the petitioner and relied upon by others; and
        - Patents or licenses awarded to the petitioner with documentation showing why the particular patent or license is significant to the field.
  - Other evidence that the petitioner is well-positioned to advance the endeavor.

Note: The petitioner may be well positioned to advance the endeavor even if there is no certainty that the proposed endeavor will be a success. However, unsubstantiated claims are insufficient and would not meet the petitioner’s burden of proof.

**Dhanasar Prong 3 - On balance, is it beneficial to the U.S. to waive the requirements of a job offer and thus of a labor certification**

The petitioner failed to show that, in light of the nature of his qualifications or proposed endeavor, it would be impractical for him to obtain a labor certification; moreover, the petitioner has not demonstrated that the national interest in his contributions is sufficiently urgent to warrant forgoing the labor certification process.

General assertions about the petitioner's work does not persuasively show that it would be beneficial to the U.S. to waive requirements of a job offer and thus waive the labor certification. The petitioner did not provide evidence or demonstrate how it would be impractical either for him to secure a job offer or to obtain a labor certification. While it is in the national interest to retain competent workers, the petitioner did not demonstrate how his proposed endeavor or skills and abilities outweigh the labor certification process which is also designed to retain these workers and provide similar opportunities to the domestic labor supply.

Please submit evidence to establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. This balance was described in Dhanasar as on one hand protecting the domestic labor supply through the creation of the labor certification process, while on the other hand recognizing that in certain cases the benefits inherent in the labor certification process can be outweighed by other factors that are also deemed to be in the national interest.

USCIS may evaluate factors including, but not limited to, the following:

- Whether, in light of the nature of the beneficiary's qualifications or proposed endeavor, it would be impractical either for the beneficiary to secure a job offer or for the petitioner to obtain a labor certification;
- Whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the beneficiary's contributions;
- Whether the national interest in the beneficiary's contributions is sufficiently urgent to warrant forgoing the labor certification process;
- Whether the beneficiary's endeavor may lead to potential creation of jobs; and
- Whether the beneficiary is self-employed in a manner that generally does not adversely affect U.S. workers.

**PLACE THE ENCLOSED COVERSHEET ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS COVERSHEET WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.**

**If you choose to mail your response by courier to the Center's physical address, please write Premium Processing, P.O. Box 87103 on both sides of the outer envelope.**

Sincerely,



L. Miller  
Director  
Officer: 0054

**COVERSHEET**  
**SCANNING REQUIRED**  
PLEASE RETURN THE REQUESTED INFORMATION AND  
ALL SUPPORTING DOCUMENTS **WITH**  
**THIS PAGE ON TOP TO:**  
**USCIS/TSC**  
**ATTN: RFE/NOID/NOIR/NOIT**  
**6046 N BELT LINE RD STE 111**  
**IRVING, TX 75038-0011**

Please check the appropriate box regarding if there is a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, additional fees, additional forms, etc. Please place the new Form G-28, additional fees, additional forms directly under this sheet.

**Yes, there is:**

☐

**A New G-28**

☐

**Additional Fees**

☐

**Additional Forms**

☐

**Other:**

If you have moved, write your current address in the blank area below. Please be sure to write clearly.

<b>(Select appropriate check box)</b>	
<input type="checkbox"/> <b>Applicant/Beneficiary</b>	<input type="checkbox"/> <b>Petitioner</b>
<b>New Address:</b>	

As required by Section § 265.1 Reporting change of address. "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act must report each change of address and new address within 10 days of such change in accordance with instructions provided by USCIS."

**REQUEST FOR EVIDENCE**

I-140 Immigrant Petition for Alien Worker



IOE0927336924

JIMENEZ MONTERO, OSCAR  
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