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Policy Alert

SUBJECT: Second Preference Eligibility for National Interest Waiver Petitions

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to address how USCIS evaluates eligibility for second preference classification for national interest waiver petitions, for which the U.S. Department of Labor (DOL) does not certify the job offer requirements.

Background

Second preference employment-based classification (EB-2) is available to members of the professions holding an advanced degree and to persons of exceptional ability. A profession is one of the occupations listed in [Section 101\(a\)\(32\)](#) of the Immigration and Nationality Act (INA) as well as any occupation for which a baccalaureate or foreign equivalent is the minimum requirement for entry into the occupation.¹ In general, an employer files the petition after obtaining a labor certification from the DOL. USCIS, however, can waive the requirement of a job offer, and thus the labor certification, when it is in the national interest. Persons seeking a national interest waiver can file the petition on their own behalf.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate.² A U.S. baccalaureate or a foreign equivalent followed by at least 5 years of progressive experience in the specialty is considered the equivalent of an advanced degree.³ This guidance explains how USCIS considers whether experience is in the specialty and whether the occupation is a profession in the absence of a labor certification outlining the job requirements. It also addresses how exceptional ability must relate to the endeavor proposed as part of the national interest waiver request. This update also provides additional guidance about how USCIS evaluates eligibility for the national interest waiver and clarifies that before a petitioner can establish eligibility for a national interest waiver, the petitioner must first demonstrate qualification for the underlying EB-2 visa classification.

¹ See [8 CFR 204.5\(k\)\(2\)](#).

² See [8 CFR 204.5\(k\)\(2\)](#) (definition of advanced degree).

³ See [8 CFR 204.5\(k\)\(2\)](#).

This guidance, contained in Volume 6 of the Policy Manual, is effective immediately and applies to requests pending or filed on or after the publication date. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

- Provides that a petitioner seeking a national interest waiver must first demonstrate qualification for the underlying second preference visa classification as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business.
- Explains that USCIS considers on a case-by-case basis whether the occupation in which the person proposes to advance an endeavor is a profession and, if applicable, whether the 5 years of post-baccalaureate experience is in the specialty, noting that it is the petitioner's burden to establish each element of eligibility.
- Clarifies that USCIS determines the relationship between exceptional ability and the proposed endeavor on a case-by-case basis, considering any shared skillsets, knowledge, or expertise.
- Provides additional guidance, with examples, about how USCIS evaluates whether a proposed endeavor has national importance.
- Explains how USCIS evaluates evidence such as letters of support and business plans when determining whether a person is well positioned to advance an endeavor.
- Clarifies, with examples, that not every entrepreneur qualifies for a national interest waiver. While USCIS decides each case on its merits, broad assertions regarding general benefits to the economy and potential to create jobs will not establish an entrepreneur's qualification for a national interest waiver.
- Explains that, as with all adjudications, USCIS evaluates all of the evidence in the aggregate, and that the list of suggested evidence for entrepreneurs is not intended to suggest that any one piece, by itself, necessarily establishes eligibility. USCIS reviews all of the person's education, experience, and skills and the benefit to the national interest when determining eligibility.

Summary of Changes

Affected Section: Volume 6 > Part F > Chapter 5 > Section D, National Interest Waiver of Job Offer

- Adds new Subsection 1 (Eligibility for Second Preference Classification) and Subsection 2 (Eligibility for the National Interest Waiver) and renumbers subsequent subsections.
- Revises and adds new content throughout redesignated Subsection 3 (Overview of the Three Prongs) and redesignated Subsection 6 (Specific Evidentiary Considerations for Entrepreneurs).

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 6: Immigrants, Part F, Employment-Based Classifications, Chapter 5, Advanced Degree or Exceptional Ability [[6 USCIS-PM F.5](#)].

This policy is effective on January 15, 2025 and will be incorporated into the Policy Manual accordingly.

USCIS Policy Manual, Volume 6: Immigrants
[Part F – Employment-Based Classifications](#)

Chapter 5. Advanced Degree or Exceptional Ability

A. Advanced Degree Professionals

1. Eligibility

To qualify for this immigrant classification as a professional with an advanced degree, the following requirements must be met:

- The beneficiary¹ must be a member of the professions² holding an advanced degree or foreign equivalent degree;
- The position certified in the underlying permanent labor certification application or Schedule A application must require, at a minimum, a professional holding an advanced degree or the equivalent;³ and
- The beneficiary must have not only had the advanced degree or its equivalent on the date that the permanent labor certification application was filed, but also must have met all of the requirements needed for entry into the proffered position at that time.⁴

2. Foreign Equivalent Degrees

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¹ This section uses the term beneficiary to refer to the noncitizen; however, if the advanced degree professional also seeks a national interest waiver of the job offer, he or she can self-petition. See Section D, National Interest Waiver of Job Offer [[6 USCIS-PM F.5\(D\)](#)].

² See [8 CFR 204.5\(k\)\(2\)](#) (defining profession as one of the occupations listed in [INA 101\(a\)\(32\)](#), as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation).

³ See [INA 203\(b\)\(2\)\(A\)](#). See [8 CFR 204.5\(k\)](#). For a discussion of considerations for petitioners seeking a national interest waiver where the U.S. Department of Labor (DOL) does not certify the job requirements, see Section D, National Interest Waiver of Job Offer, Subsection 1, Eligibility for Second Preference Classification [[6 USCIS-PM F.5\(D\)\(1\)](#)].

⁴ See [8 CFR 204.5\(k\)\(4\)](#).

3. Advanced Degree Position

Mere possession of an advanced degree or its equivalent is not sufficient for establishing a beneficiary's eligibility for this classification. The petitioner must also demonstrate that the position certified in the underlying permanent labor certification application or set forth on the Schedule A application requires a professional holding an advanced degree or the equivalent.⁵ The petitioner must demonstrate that the position, and the industry as a whole, normally requires that the position be filled by a person holding an advanced degree.

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B. Exceptional Ability

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C. Professional Athletes

1. Eligibility

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2. Evidence

As is the case with all petitions for persons of exceptional ability, the petitioner must provide, as initial evidence, documentation demonstrating that the beneficiary qualifies for exceptional ability classification, as specified in the regulations.⁶ However, submission of evidence that meets the three required regulatory criteria does not necessarily establish that the beneficiary is qualified for the classification. An officer must assess the quality of such evidence, in addition to the quantity of the evidence presented, in determining whether the petitioner has met its burden in establishing that the beneficiary is qualified for the classification.

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D. National Interest Waiver of Job Offer

⁵ For a discussion of considerations for petitioners seeking a national interest waiver where DOL does not certify the job requirements, see Section D, National Interest Waiver of Job Offer, Subsection 1, Eligibility for Second Preference Classification [[6 USCIS-PM F.5\(D\)\(1\)](#)].

⁶ See [8 CFR 204.5\(k\)\(3\)\(ii\)-\(iii\)](#). See Section B, Exceptional Ability, Subsection 2, Evidence [[6 USCIS-PM F.5\(B\)\(2\)](#)].

Since 1990, the INA has provided that a person of exceptional ability⁷ may obtain a waiver of the job offer requirement if USCIS deems such waiver to be in the “national interest.”⁸ A subsequent technical amendment to the INA⁹ extended the job offer waiver to certain professionals.¹⁰ This waiver provision applies only to the second preference (EB-2) classification for members of the professions holding advanced degrees and persons of exceptional ability. This waiver of the job offer is known as the national interest waiver.

A petition filed with a request for a national interest waiver on behalf of a person does not need to be supported by a job offer; therefore, the person may file as a self-petitioner. A waiver of a job offer also includes a waiver of the permanent labor certification requirement.¹¹ In support of the petition, however, the petitioner must submit the employee-specific portions of a permanent labor certification (without DOL approval).¹² The petitioner may submit either the Form ETA 750B or Form ETA 9089.

1. Eligibility for Second Preference Classification

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the person’s qualification for the underlying EB-2 visa classification as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business.¹³ If the person does not have the qualifications for the EB-2 classification, the petition is statutorily ineligible for the national interest waiver.

Because USCIS evaluates threshold eligibility for the EB-2 classification prior to addressing the national interest waiver eligibility, in cases where the person does not have the qualifications for the EB-2 classification, USCIS may request additional evidence or issue a Notice of Intent to Deny, as appropriate, or issue a denial without reaching the national interest waiver determination.

Whether demonstrating EB-2 eligibility as an advanced degree professional or as a person of exceptional ability, the petitioner must clearly describe in a straightforward manner the person’s occupation and proposed endeavor.¹⁴ The intended occupation is the one through which the person plans to advance the proposed endeavor, and the proposed endeavor is more

⁷ See Section B, Exceptional Ability [[6 USCIS-PM F.5\(B\)](#)].

⁸ See [INA 203\(b\)\(2\)\(B\)\(i\)](#). See [8 CFR 204.5\(k\)\(4\)\(ii\)](#).

⁹ See Section 302(b)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, [Pub. L. 102-232](#), 105 Stat. 1733, 1743 (December 12, 1991).

¹⁰ See Section A, Advanced Degree Professionals [[6 USCIS-PM F.5\(A\)](#)].

¹¹ See [8 CFR 204.5\(k\)\(4\)\(ii\)](#).

¹² See [8 CFR 204.5\(k\)\(4\)\(ii\)](#).

¹³ See [INA 203\(b\)\(2\)](#), [INA 203\(b\)\(2\)\(A\)](#), and [INA 203\(b\)\(2\)\(B\)\(i\)](#).

¹⁴ USCIS recognizes that many national interest waiver petitioners are involved in highly technical occupations and proposed endeavors. However, it would be helpful to describe those in a way that an average person could understand.

specific than the general occupation. For example, in *Matter of Dhanasar*, the occupation was engineer while the endeavor was engaging in research and development relating to air and space propulsion systems.¹⁵

Meeting Requirements of a Member of the Professions Holding an Advanced Degree

The intended occupation¹⁶ through which the person plans to advance the proposed endeavor must meet the definition of a profession.¹⁷ Officers must make this determination in the absence of a DOL-certified labor certification that contains the minimum job requirements for the occupation.¹⁸ Separately, for those relying on a bachelor's degree followed by 5 years of progressive experience in the specialty, that experience must be in the specialty, as required by regulation.¹⁹

For the second preference classification, a profession is defined as one of the occupations listed in [INA 101\(a\)\(32\)](#), or any occupation for which a U.S. bachelor's degree or its foreign degree equivalent is the minimum requirement for entry into the occupation.

A professional occupation is determined by the general requirements to enter the intended occupation, and not by the credentials of any one person seeking to work in that field.²⁰ Therefore, not everyone who holds an advanced degree (or its defined equivalent) necessarily qualifies for classification as a member of the professions holding an advanced degree; the occupation underlying the endeavor must also require a bachelor's degree for entry into the occupation.²¹

It is the petitioner's burden to establish, by a preponderance of the evidence, that the intended occupation requires at least a bachelor's degree or its foreign equivalent degree for entry. USCIS considers, on a case-by-case basis, whether the occupation in which the person proposes to advance the intended endeavor (including certain entrepreneurial endeavors) is a profession.

¹⁵ See [Matter of Dhanasar](#), 26 I&N 884, 891 (AAO 2016).

¹⁶ See [Matter of Dhanasar](#), 26 I&N 884, 891 (AAO 2016).

¹⁷ See [8 CFR 204.5\(k\)\(2\)](#) ("Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."). See also [INA 101\(a\)\(32\)](#) which provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

¹⁸ For a discussion of the analysis of the job requirements on a labor certification for advanced degree professionals where the petitioner does not seek a national interest waiver, see Section A, Advanced Degree Professionals [[6 USCIS-PM F.5\(A\)](#)].

¹⁹ See [8 CFR 204.5\(k\)\(2\)](#) (definition of advanced degree).

²⁰ The person's credentials, however, are relevant to whether the person has an advanced degree.

²¹ See [Matter of Katigbak](#), 14 I&N Dec. 45, 46 (Reg. Comm. 1971) (The degree or major must be academically appropriate to the profession for which petitioned.).

For example, while a person with a master's degree or Ph.D. in engineering proposing an endeavor in the field of engineering may qualify as an advanced degree professional, a similarly educated person who intends to start a bakery may have difficulty establishing that they are an advanced degree professional. While the engineering degree is an advanced degree and the occupation of engineer is a profession, the occupation of baker does not typically require a bachelor's degree or its foreign equivalent degree for entry into the occupation.²² The occupation underlying the endeavor is determinative.

With respect to individuals who seek to qualify as an advanced degree professional based on a combination of a bachelor's degree and "five years of progressive experience in the specialty,"²³ such experience must occur after completion of the bachelor's degree or foreign equivalent degree.²⁴ Absent a labor certification through which the DOL has certified the job requirements, USCIS must necessarily review the proposed endeavor. The following paragraphs discuss how USCIS considers "experience in the specialty" in national interest waiver cases.

Where the person has 5 years of progressive post-baccalaureate experience in the same specialty as the degree and seeks to work in a related endeavor, the experience is generally considered to be qualifying. On the other hand, there may be cases where the post-baccalaureate experience is not qualifying because either the experience is unrelated to the degree, unrelated to the endeavor, or both.

For professions that do not require a degree in a specific field, for purposes of national interest waivers USCIS generally interprets the person's specialty as related to the proposed endeavor.²⁵

Progressive experience in a field unrelated to the bachelor's degree does not equate to an advanced degree in that field. For example, a bachelor's degree in chemistry followed by 5 years of experience as a restaurant manager generally does not equate to a master's degree in chemistry for the purpose of pursuing a chemistry-related endeavor.²⁶ It is the petitioner's burden to demonstrate by a preponderance of the evidence that the progressive experience is related to the specialty. USCIS determines whether experience is related to the specialty on a case-by-case basis.

Meeting Requirements of the Person of Exceptional Ability Classification

²² See U.S. Bureau of Labor Statistics, [Occupational Outlook Handbook, Bakers](#), indicating no formal education credential is typically required to work as a baker.

²³ A specialty generally refers to the field of study related to the baccalaureate degree.

²⁴ See [8 CFR 204.5\(k\)\(2\)](#) (definition of advanced degree).

²⁵ In its joint explanatory statement, Congress' conference committee on the 1990 amendments to the INA stated: "The conferees intend that the equivalent of an advanced degree be defined to mean a bachelor's degree plus at least five years' experience in the particular profession." See H.R. Rep. 101-955 (1990). Accordingly, the legislative history indicates that the profession, rather than a required major field of study, determines the specialty.

²⁶ This analysis would be the same for a petition supported by a labor certification, while also taking into account the job requirements DOL certified.

Similar to the analysis for advanced degree professionals, the analysis for a petition requesting classification as a person with exceptional ability seeking a national interest waiver must also be conducted by an officer in the absence of a DOL-certified labor certification that contains the minimum job requirements for the occupation.

Independent of the national interest waiver analysis, to qualify for the exceptional ability classification, a person must substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States because of their exceptional ability.²⁷

All persons seeking the exceptional ability EB-2 classification must demonstrate their eligibility by satisfying at least three of the six categories of evidence outlined in the regulations.²⁸ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.

If a person meets at least three of the six categories of evidence, USCIS then conducts a final merits determination to decide whether the evidence in its totality shows that the person is recognized as having exceptional ability in the sciences, arts, or business; specifically, expertise significantly above that ordinarily encountered in the respective field of sciences, arts, or business.²⁹

In the context of a national interest waiver request, the claimed “area of exceptional ability”³⁰ must also be directly related to the person’s proposed endeavor.

For example, a person who has computer science education or experience that does not equate to the definition of an advanced degree and who is proposing an endeavor related to computer science may qualify as a person with exceptional ability if USCIS determines that they have satisfied at least three of the six regulatory criteria and demonstrated their exceptional ability in an area such as computer science, which is directly related to their endeavor.³¹

However, if a person with the same credentials were to propose an endeavor that does not relate to the area of computer science, that person would generally not qualify for the classification even if they have exceptional ability in the area of computer science.

²⁷ See [INA 203\(b\)\(2\)\(A\)](#).

²⁸ See [8 CFR 204.5\(k\)\(3\)\(ii\)\(A\)-\(F\)](#). For a discussion of exceptional ability in general, see Section B, Exceptional Ability [[6 USCIS-PM F.5\(B\)](#)].

²⁹ See [8 CFR 204.5\(k\)\(2\)](#) (defining exceptional ability in the sciences, arts, or business as a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business). For a discussion of exceptional ability in general, see Section B, Exceptional Ability [[6 USCIS-PM F.5\(B\)](#)].

³⁰ See [8 CFR 204.5\(k\)\(3\)\(ii\)\(A\)](#).

³¹ For a discussion of how USCIS analyzes exceptional ability see Section B, Exceptional Ability [[6 USCIS-PM F.5\(B\)](#)].

It is the petitioner's burden to demonstrate the connection between their exceptional ability and the proposed endeavor.³² In evaluating the relationship between exceptional ability and the endeavor, USCIS considers whether the area of exceptional ability and the proposed endeavor share skillsets, knowledge, or expertise. USCIS makes the determination as to exceptional ability on a case-by-case basis.

2. Eligibility for the National Interest Waiver

To establish eligibility for the national interest waiver, the petitioner has the burden of demonstrating that:

- The person qualifies as either a member of the professions holding an advanced degree or as a person of exceptional ability;³³ and
- The waiver of the job offer requirement, and thus, the labor certification requirement, is in the “national interest.”

Qualification for the EB-2 classification as a member of the professions holding an advanced degree or as a person of exceptional ability does not automatically mean that the person qualifies for a national interest waiver. Regardless of whether the person is an advanced degree professional or demonstrates exceptional ability, the petitioner seeking a waiver of the job offer must not only demonstrate eligibility for the classification, but also demonstrate that the waiver itself is in the national interest.³⁴

Specifically, in the exceptional ability context, the INA requires that all petitions for a person of exceptional ability show that the person's presence in the United States would substantially benefit the national economy, cultural or educational interests, or welfare of the United States in the future. Even if the petitioner demonstrates such exceptional ability, if the petitioner is seeking a waiver of the job offer, the petitioner must also demonstrate the additional requirement of national interest.³⁵ Neither the INA nor the regulations define the term “national interest.”

³² In discussing persons of exceptional ability seeking a national interest waiver, *Matter of Dhanasar* references such ability in the “given area of endeavor.” See *Matter of Dhanasar*, 26 I&N Dec. 884, 886 n.3 (AAO 2016).

³³ See [8 CFR 204.5\(k\)\(1\)-\(3\)](#) (providing definitions and considerations for making advanced degree professional and person of exceptional ability determinations). As explained in *Matter of Dhanasar*, 26 I&N Dec. 884, 886 n.3 (AAO 2016), advanced degree professionals and persons of exceptional ability are generally subject to the labor certification requirement and are not exempt because of their advanced degree or exceptional ability. See *Matter of Dhanasar*, 26 I&N Dec. 884, 893 (AAO 2016).

³⁴ Therefore, whether a given person seeks classification as a person of exceptional ability or as a member of the professions holding an advanced degree, that person cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in the person's field of expertise. See *Matter of Dhanasar*, 26 I&N Dec. 884, 886 n.3 (AAO 2016).

³⁵ See [INA 203\(b\)\(2\)](#).

The burden rests with the petitioner to establish that the waiver of the job offer requirement is in the national interest. USCIS considers every petition on a case-by-case basis.

USCIS may grant a national interest waiver as a matter of discretion if the petitioner demonstrates eligibility by a preponderance of the evidence, based on the following three prongs:³⁶

- The person’s proposed endeavor has both substantial merit and national importance;
- The person is well positioned to advance the proposed endeavor; and
- On balance, it would be beneficial to the United States to waive the job offer and thus the permanent labor certification requirements.³⁷

The subsections below provide: an overview of the three prongs that are part of the analysis; guidance specific to persons with advanced degrees in science, technology, engineering, or mathematics (STEM); guidance related to letters of support and other evidence from interested government agencies and quasi-governmental entities; and guidance specific to entrepreneurs.

When an officer denies a national interest waiver petition, the decision must include information about appeal rights and the opportunity to file a motion to reopen or reconsider.³⁸

3. Overview of the Three Prongs

First Prong: The Proposed Endeavor has both Substantial Merit and National Importance

When reviewing the proposed endeavor, officers determine whether the evidence presented demonstrates, by a preponderance of the evidence, the proposed endeavor has substantial merit and national importance. The term “endeavor” is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.³⁹

³⁶ The three prongs derive from the precedent decision [Matter of Dhanasar](#), 26 I&N Dec. 884 (AAO 2016). The references to the facts in that case in this guidance, however, are illustrative and do not set the standard.

³⁷ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 889 (AAO 2016). See [Poursina v. USCIS](#), 936 F.3d 868 (9th Cir. 2019).

³⁸ See [8 CFR 103.3\(a\)](#).

³⁹ For instance, although the petitioner was an engineer by occupation, the decision discusses his specific proposed endeavors “to engage in research and development relating to air and space propulsion systems, as well as to teach aerospace engineering.” See [Matter of Dhanasar](#), 26 I&N Dec. 884, 891 (AAO 2016).

For example, while engineer is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, and the area of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. When explaining the endeavor, the petitioner should do so in a straightforward manner and clearly lay out the potential direct impacts of the endeavor and whether the endeavor will be furthered through the course of the person's duties at a particular employer or some other way.

The endeavor's merit may be demonstrated in areas including, but not limited to, business, entrepreneurship, science, technology, culture, health, or education.

In addition, officers may consider evidence of the endeavor's potential significant economic impact, but "merit may be established without immediate or quantifiable economic impact" and "endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States."⁴⁰

Officers must also examine the national importance of the specific endeavor proposed by considering its potential prospective impact. Officers should focus on the nature of the proposed endeavor, rather than only the geographic breadth of the endeavor.⁴¹

For example, the endeavor "may have national importance because it has national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." Economically, it may have "significant potential to employ U.S. workers," that is, at a level that is significant with respect to the population and economic circumstances of the relevant region, or it may offer "other substantial positive economic effects, particularly in an economically depressed area."⁴² Therefore, petitioners should submit a detailed description explaining the proposed endeavor and supporting documentary evidence to establish that the endeavor is of national importance.

In determining national importance, the officer's analysis focuses on what the person will be doing rather than the specific job title or occupational classification. The analysis considers whether the petition contains substance that explains and substantiates how working in the proposed endeavor meets the national importance standard.

For example, a proposed endeavor to engage in classroom teaching, without broader implications for a field or region, generally does not rise to the level of having national

⁴⁰ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 892 (AAO 2016) (finding that the petitioner's proposed research "aims to advance scientific knowledge and further national security interests and U.S. competitiveness in the civil space sector" and therefore has substantial merit).

⁴¹ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 887 (AAO 2016) (finding that "certain locally- or regionally-focused endeavors may be of national importance despite being difficult to quantify with respect to geographic scope").

⁴² See [Matter of Dhanasar](#), 26 I&N Dec. 884, 889-90 (AAO 2016).

importance for the purpose of establishing eligibility for a national interest waiver. Citing the general importance of the profession of classroom teaching would not alone be sufficient to demonstrate national importance in the context of a national interest waiver request. Proposing to work in an occupation with a national shortage or serve in a consulting capacity for others seeking to work in an occupation with a national shortage alone, is also insufficient.

As another example, assertions regarding the general importance of business owners or entrepreneurs for job creation or other economic benefits would not alone be sufficient to demonstrate national importance in the context of a national interest waiver request. A petition involving a startup company should demonstrate in detail how this specific endeavor meets the national interest requirement.⁴³

Benefits to a specific employer alone, even an employer with a national footprint, are not sufficiently relevant to the question of whether a person's endeavor has national importance. At issue is whether the petitioner can demonstrate that the person's own individual endeavor stands to have broader implications, such as for a field, a region, or the public at large.

For example, a person developing a drug for a pharmaceutical company may establish national importance by demonstrating the prospective public health benefits of the drug, instead of solely projecting the profits that will accrue to the employer.

As another example, a person developing a particular technology for use or sale by a given company may not be able to establish national importance based on evidence that this technology will have benefits for the company or its clients alone. To establish broader public or commercial implications at a level consistent with national importance for this field or industry, the petitioner could demonstrate, through the submission of relevant evidence, widespread interest in adoption or licensing of the technology, a novel and important manufacturing or operational process, or how the technology stands to impact the development of similar technology by other companies.

As a final example, a software engineer adapting their employer's code for various clients will have difficulty demonstrating the national importance of that endeavor, absent additional broader impacts supported by specific evidence.

Ultimately, 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

⁴³ For more information, see Subsection 6, Specific Evidentiary Considerations for Entrepreneurs [[6 USCIS-PM F.5\(D\)\(6\)](#)].

contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance.⁴⁴

Second Prong: The Person is Well Positioned to Advance the Proposed Endeavor

Unlike the first prong, which focuses on the merit and importance of the proposed endeavor, the second prong centers on the person. Specifically, the petitioner must demonstrate that the person is well positioned to advance the endeavor.

In evaluating whether the person is well positioned to advance the endeavor, USCIS considers factors⁴⁵ including, but not limited to:

- The person’s education, skills, knowledge, and record of success in related or similar efforts;
- Evidence of a detailed proposal or plan that the person developed, or played a significant role in developing, for future activities related to the proposed endeavor;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the person from potential customers, users, investors, or other relevant entities or persons.

The petitioner should submit evidence to document the person’s past achievements, explain how those achievements relate to the proposed endeavor or provide evidence of progress towards achieving the endeavor, and corroborate projections related to the proposed endeavor. While there are many types of evidence a petitioner may choose to submit, ultimately the evidence must show that the person is well-positioned to advance the endeavor.

A person may be well-positioned to advance an endeavor even if the person cannot demonstrate that the proposed endeavor is more likely than not to ultimately succeed.⁴⁶ However, unsubstantiated claims would not meet the petitioner’s burden of proof.

⁴⁴ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 889-90 (AAO 2016) (explaining that “an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance”). See [Matter of Dhanasar](#), 26 I&N Dec. 884, 892 (AAO 2016) (finding that the petitioner’s evidence demonstrated the national importance of advancements in STEM fields, specifically hypersonic propulsion technologies and research).

⁴⁵ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 890, 892-93 (AAO 2016).

⁴⁶ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 890, (AAO 2016).

Below is a non-exhaustive list of the types of evidence that may demonstrate that the person is well positioned to advance a proposed endeavor. This list is not meant to be a checklist or to indicate that any one type of evidence is either required or sufficient to establish eligibility.

- Degrees, certificates, or licenses in the field;
- Patents, trademarks, or copyrights developed by the person;
- Published articles or media reports about the person’s achievements or current work;
- Documentation demonstrating a strong citation history of the person’s work or excerpts of published articles showing positive discourse around, or adoption of, the person’s work;
- Evidence that the person’s work has influenced the field of endeavor;
- A plan describing how the person intends to continue the proposed work in the United States;⁴⁷
- Correspondence from prospective or potential customers, users, investors, or other relevant entities;
- Documentation reflecting feasible plans for financial support;⁴⁸
- Evidence that the person has received investment from U.S. investors, such as venture capital firms, angel investors, or start-up accelerators, and that the amounts are appropriate to the relevant endeavor;
- Copies of contracts, agreements, or licenses showing the potential impact of the proposed endeavor;
- Letters from government agencies or quasi-governmental entities in the United States demonstrating that the person is well positioned to advance the proposed endeavor (see below for a more detailed discussion of supporting evidence from interested government agencies and quasi-governmental entities);⁴⁹

⁴⁷ In the case of a petitioner who does not intend to be self-employed, USCIS considers a job offer or communications with prospective employers, while not required, relevant to demonstrate the circumstances or capacity in which the person intends to carry out the endeavor and the feasibility of that plan.

⁴⁸ For a discussion of financing for entrepreneurs, see Subsection 6, Specific Evidentiary Considerations for Entrepreneurs [[6 USCIS-PM F.5\(D\)\(6\)](#)].

⁴⁹ For a discussion of letters from interested government agencies, see Subsection 5, The Role of Interested Government Agencies or Quasi-Governmental Entities [[6 USCIS-PM F.5\(D\)\(5\)](#)].

- Evidence that the person has received awards or grants or other indications of relevant non-monetary support (for example, using facilities free of charge) from federal, state, or local government entities with expertise in economic development, research and development, or job creation; and
- Evidence demonstrating how the person's work is being used by others, such as, but not limited to:
 - Contracts with companies using products that the person developed or assisted in developing;
 - Documents showing technology that the person invented, or contributed to inventing, and how others use that technology; and
 - Patents or licenses for innovations the person developed with documentation showing why the patent or license is significant to the field.

Letters may be persuasive when they are from experts in the person's field who have first-hand knowledge of the person's achievements, describe those achievements, provide specific examples of how the person is well positioned to advance the person's endeavor, and are supported by other independent evidence. Business plans or other similar descriptions of the person's plans, while useful in explaining the person's objectives, should be supported by other independent evidence.

In each case, officers must consider the totality of circumstances to determine whether the preponderance of evidence establishes that the person is well positioned to advance the proposed endeavor.

USCIS decides each petition on a case-by-case basis, and the more integral a person is to an endeavor, the stronger the case the person presents that they are well-positioned to advance the endeavor.

Third Prong: On Balance, it Would be Beneficial to the United States to Waive the Job Offer and thus the Permanent Labor Certification Requirements

Once officers have determined that the petitioner met the first two prongs, they proceed with the analysis of the third prong. This last prong requires the petitioner to demonstrate that the factors in favor of granting the waiver outweigh those that support the requirement of a job offer and thus a labor certification, which is intended to ensure that the admission of foreign

workers will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.⁵⁰

A person is not precluded from seeking a national interest waiver because the person's employer has applied or could apply to DOL for a labor certification. Congress sought to protect U.S. workers and wages through the labor certification program, and Congress also recognized that in certain instances the national interest is better served by a waiver of the job offer and thus the labor certification requirement. In such cases, a national interest waiver outweighs the benefits inherent to the labor certification process, which primarily focuses on a geographically limited labor market. Within the context of national interest waiver adjudications, Congress entrusted the Secretary of Homeland Security to balance this interest.

For the third prong, an officer assesses whether the person's endeavor and the person being well-positioned to advance that endeavor, taken together, provide benefits to the nation such that a waiver of the labor certification requirement outweighs the benefits that ordinarily flow from that requirement. For example, in the case of an entrepreneur, where the person is self-employed in a manner that generally does not adversely affect U.S. workers,⁵¹ or where the person establishes or owns a business that provides jobs for U.S. workers, there may be little benefit from the labor certification.

In establishing eligibility for the third prong, petitioners may submit evidence relating to one or more of the following factors, as outlined in [Matter of Dhanasar](#):

- Whether, in light of the nature of the person's qualifications or proposed endeavor, it would be impractical to obtain a labor certification;⁵²
- The benefit to the United States from the person's prospective contributions, even if other U.S. workers were also available;⁵³ and

⁵⁰ See [20 CFR 656.1](#). See Part E, Employment-Based Immigration, Chapter 6, Permanent Labor Certification, Section A, Employer Requirements, Subsection 2, Individual Permanent Labor Certifications [[6 USCIS-PM E.6\(A\)\(2\)](#)].

⁵¹ See discussion of entrepreneurs in Subsection 6, Specific Evidentiary Considerations for Entrepreneurs, [[6 USCIS-PM F.5\(D\)\(6\)](#)].

⁵² See [Matter of Dhanasar](#), 26 I&N Dec. 884, 890 (AAO 2016).

⁵³ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 891, 893 (AAO 2016) (holding that "because of his record of successful research in an area that furthers U.S. interests, we find that this petitioner offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available"). In that case, the Administrative Appeals Office (AAO) noted that the petitioner holds three graduate degrees in fields tied to the proposed endeavor, that his proposed research has significant implications for U.S. national security and competitiveness, and that his work had attracted interest from government agencies. Therefore, the AAO considered the petitioner's endeavor in the field of aerospace engineering, and his level and extent of expertise within that field, taken together, to have the potential to provide great benefit to the United States such that waiver of the job offer was in the national interest.

- The national interest in the person’s contributions is sufficiently urgent to warrant forgoing the labor certification process,⁵⁴ such as a time-sensitive public health or safety benefit offered by the endeavor.

More specific considerations may include:

- Whether the labor certification process may prevent an employer from hiring a person with unique knowledge or skills exceeding the minimum requirements standard for that occupation,⁵⁵ which cannot be appropriately captured by the labor certification;⁵⁶
- Whether the person’s endeavor has the potential to generate considerable economic impact consistent, for example, with economic revitalization;⁵⁷ and
- Whether the person’s endeavor may lead to potential job creation.

Note that evidence of a national labor shortage in the person’s occupation would not, by itself, satisfy this third prong.

4. Specific Evidentiary Considerations for Persons with Advanced Degrees in Science, Technology, Engineering, or Mathematics (STEM) Fields

There are specific evidentiary considerations relating to STEM degrees and fields, although the analysis is the same regardless of endeavor, so these considerations may apply in non-STEM endeavors where the petitioner demonstrates that such considerations are applicable.⁵⁸ USCIS recognizes the importance of progress in STEM fields and the essential role of persons with

⁵⁴ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 891 (AAO 2016).

⁵⁵ An employer may only list the minimum job requirements on a labor certification application. See [20 CFR 656.17\(i\)](#).

⁵⁶ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 890 (AAO 2016).

⁵⁷ See [Matter of Dhanasar](#), 26 I&N Dec. 884, 889 (AAO 2016) (explaining that when evaluating the first prong, “the potential to create a significant economic impact may be favorable but is not required”). The potential economic impact is an appropriate inquiry when weighing the relative benefit of granting the national interest waiver.

⁵⁸ “STEM” is not defined in the regulations describing the national interest waiver benefit, but officers may refer to the definition found in the context of STEM optional practical training for students for guidance. See [8 CFR 214.2\(f\)\(10\)\(ii\)\(C\)\(2\)\(i\)](#) (defining STEM as “science, technology, engineering, or mathematics”).

advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies⁵⁹ or other STEM areas important to U.S. competitiveness⁶⁰ or national security.⁶¹

To identify a critical and emerging technology field, officers consider governmental, academic, and other authoritative and instructive sources, and all other evidence submitted by the petitioner. The lists of critical and emerging technology subfields published by the Executive Office of the President, by either the National Science and Technology Council or the National Security Council, are examples of authoritative lists.⁶²

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Examples of evidence that can supplement the person's education are listed above,⁶³ but a petitioner may submit any relevant evidence, including letters from interested government agencies as discussed below,⁶⁴ to show how the person is well positioned to advance the proposed endeavor. A degree in and of itself, however, is not a sufficient basis to determine that a person is well positioned to advance the proposed endeavor.

Finally, with respect to the third prong, it is the petitioner's burden to establish that factors in favor of granting the waiver outweigh those that support the requirement of a job offer and thus a labor certification.

⁵⁹ Critical and emerging technologies are those that are critical to U.S. national security, including military defense and the economy. While those technologies necessarily evolve and USCIS reviews the specifics of each proposed endeavor on a case-by-case basis, examples may include, but are not limited to, certain critical areas of artificial intelligence or quantum information science. When adjudicating this discretionary benefit, officers should review the entire record and, where officers have concerns, work closely with their supervisors and fraud, benefit integrity, and national security personnel in their offices.

⁶⁰ One, but certainly not the only, indicator of STEM areas important to U.S. competitiveness is inclusion as a priority in the annual research and development priorities memo about the President's budget issued jointly by the White House Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget. For example, the [Memorandum on Research and Development Priorities](#) (August 2021) for the President's FY 2023 budget is indicative of STEM areas important to U.S. competitiveness.

⁶¹ U.S. national security objectives are outlined in the [Interim National Security Strategic Guidance](#). These objectives include protect the security of the American people; expand economic prosperity and opportunity; and realize and defend democratic values. For purposes of national interest waiver policy and adjudications, "national security" refers to these three objectives.

⁶² For example, the National Science and Technology Council's [Critical and Emerging Technologies List Update](#) identifies critical and emerging technologies with the potential to further national security objectives, such as the security of Americans, economic prosperity, or democratic values. Departments and agencies may consult this list when developing, for example, initiatives to research and develop technologies that support national security missions, compete for international talent, and protect sensitive technology from misappropriation and misuse. The list is part of a report by the Fast Track Action Subcommittee on Critical and Emerging Technologies.

⁶³ See Subsection 3, Overview of the Three Prongs [[6 USCIS-PM F.5\(D\)\(3\)](#)].

⁶⁴ For a discussion of letters from interested government agencies, see Subsection 5, The Role of Interested Government Agencies or Quasi-Governmental Entities [[6 USCIS-PM F.5\(D\)\(5\)](#)].

When evaluating the third prong and whether the United States may benefit from the person's entry, regardless of whether other U.S. workers are available (as well as other factors relating to prong three discussed above, such as urgency), USCIS considers the following combination of facts contained in the record to be a strong positive factor:

- The person possesses an advanced STEM degree, especially a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

The benefit is especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies as discussed in the next subsection.

5. The Role of Interested Government Agencies or Quasi-Governmental Entities

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6. Specific Evidentiary Considerations for Entrepreneurs

There may be unique aspects of evidence submitted by an entrepreneur petitioner⁶⁵ undertaking a proposed endeavor, including through an entity based in the United States in which the petitioner typically possesses (or will possess) an ownership interest, and in which the petitioner maintains (or will maintain) an active and central role such that the petitioner's knowledge, skills, or experience would significantly advance the proposed endeavor.

Not every entrepreneur qualifies for a national interest waiver. While USCIS decides each case on its merits, broad assertions regarding general benefits to the economy and potential to create jobs will not establish an entrepreneur's qualification for a national interest waiver.

For example, an entrepreneur cannot demonstrate national importance under the first prong solely by opening a consulting firm for those working or seeking to work in a nationally important occupation. Similarly, statements and evidence regarding the importance of the relevant industry overall, such as the car dealership industry, will not demonstrate that a person seeking to start a car dealership satisfies the national importance prong.

⁶⁵ This section, because it discusses self-petitions by entrepreneurs, does not distinguish between "petitioner" and "person" as they are one and the same.

As an example related to the second prong, evidence that a person has general work experience in a given field may not be sufficient to demonstrate that such person is well positioned to start a consulting business providing expertise in that field. For instance, if a person's experience in banking is limited to working as a teller or accounts manager, USCIS may determine that the person has not established they are well positioned to advance an entrepreneurial endeavor to establish a consulting business that will advise U.S. banks nationally on how to improve customer relations.

Strong petitions would discuss how the person's record of success would translate to a proposed plan or forecast for continued success, and steps they have taken toward those proposed activities, and plans that tie into the person's background and expertise. A persuasive petition could delineate clear details such as whether the person has met certain achievements toward the endeavor that may have generated interest from potential customers, users, investors, or other relevant entities or individuals. Beyond this, USCIS would also welcome probative evidence to support how the person has anticipated relevant metrics such as market size and share, job creation, and revenue growth.

When evaluating whether petitions for entrepreneurs satisfy the three-pronged framework, officers may consider the fact that many entrepreneurs do not follow traditional career paths and there is no single way in which an entrepreneurial venture entity must be structured.

In addition to the more generally applicable evidence described above, an entrepreneur petitioner may submit the types of evidence discussed under the italicized subheadings below to substantiate any business plans and to establish that the endeavor has substantial merit and national importance, that the petitioner is well positioned to advance the endeavor, and that, on balance, it would be beneficial to waive the job offer and thus labor certification requirements.

USCIS evaluates all of the evidence in the aggregate; not every piece of evidence necessarily establishes eligibility.⁶⁶ For example, ownership of a company, while relevant to whether the person is well positioned to advance the endeavor, rarely establishes eligibility on its own. USCIS reviews all of the evidence submitted, including the person's education, experience, and skills when determining eligibility.

Evidence of Ownership and Role in the U. S.-Based Entity

The petitioner may have an ownership interest in an entity based in the United States, of which the petitioner may also be the founder or co-founder. The petitioner may also play an active and central role in the operations of the entity as evidenced by the petitioner's appointment as an

⁶⁶ See [Matter of Chawathe](#), 25 I&N Dec. 369, 376 (AAO 2010) (USCIS examines 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.).

officer (or similar position of authority) of the entity or in another key role within the entity. Such evidence may have probative value in demonstrating the petitioner is well positioned to advance the endeavor.

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Investments

An investment, binding commitment to invest, or other evidence demonstrating a future intent to invest in the entity by an outside investor, consistent with industry standards, may provide independent validation and support of a finding of the substantial merit of the proposed endeavor or the petitioner being well positioned to advance the proposed endeavor.

This investment may come from persons, such as angel investors, or established organizations, such as venture capital firms. Because different endeavors have different capital needs, USCIS also considers the amount of capital that would be appropriate to advance the endeavor in determining whether the petitioner has secured sufficient investments.

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Revenue Generation, Growth in Revenue, and Job Creation

Relevant growth metrics may support that the proposed endeavor, the petitioner's start-up entity, or both, has substantial merit or that the petitioner is well positioned to advance the proposed endeavor. Such evidence may include a showing that the entity has exhibited growth in terms of revenue generation, jobs created in the United States, or both, and the petitioner's contribution to such growth.

This evidence may also support that the proposed endeavor, the petitioner's start-up entity, or both, have national importance when coupled with, for example, evidence that the current or proposed start-up entity is located in an economically depressed area that has benefited or will benefit from jobs created by the start-up entity or that the potential job creation will otherwise be at a significant level with respect to the population and economic circumstances of the relevant area.

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