



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-C-H-

DATE: DEC. 27, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of USCIS' Texas Service Center denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he is eligible for a national interest waiver based on his work to improve "the reintegration of our returning veterans and wounded warriors into productive society through coordination of various organizations and entities in collaboration toward that goal." The Petitioner contends that the Director misstated his field as "strategic planning" and did not properly consider his past record of achievement.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she 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

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

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proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.²

II. ANALYSIS

The Director found that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The Petitioner proposes to work as a self-employed consultant for various non-profit and governmental groups to improve U.S. veterans' services and wounded warrior care. He indicated that he is currently the [REDACTED] to the United Kingdom (U.K.) [REDACTED] at the [REDACTED]. In this capacity, the Petitioner is the [REDACTED] leading the management team responsible for the U.S.-U.K. defense relationship. He is also the [REDACTED] for wounded warrior events on behalf of the [REDACTED]. Examples of his past and current projects have included serving as a member of the joint U.S.-U.K. veterans and families taskforce; organizing U.S. and U.K. participation in the [REDACTED] coordinating wounded warrior dinners at the Ambassador's residence for patients at [REDACTED] arranging for the [REDACTED] and [REDACTED] to attend the [REDACTED] conference for the wounded warriors and veterans; and coordinating [REDACTED] visit to [REDACTED] and the [REDACTED].

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to serve the U.S. veteran community by forming his own small consulting firm through which he will undertake projects aimed at improving veterans' services and wounded warrior care. He seeks to coordinate organizations and projects that will facilitate the re-integration of returning veterans and wounded warriors into productive society. The record, which includes letters from prospective clients and a business plan for his company, reflects that his consultancy will offer services to various philanthropic organizations, government entities, and businesses. The Petitioner also

² See *Dhanasar*, 26 I&N Dec. at 888-91, for further elaboration on these three prongs.

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submitted news articles and research reports describing the plight of returning Iraq and Afghanistan veterans and the necessity of ensuring adequate services for their physical and emotional well-being. We find that the Petitioner's proposed work, which relates to improving programs and assisting organizations that provide support and advocacy for U.S. veterans and wounded warriors, has substantial merit.

The record also demonstrates that the Petitioner's proposed endeavor is of national importance. The Petitioner submitted probative expert letters from individuals holding senior positions in the military, government, business, and philanthropic organizations that describe the importance of providing effective programs for U.S. troops when they return home and transition to civilian life. He also provided news articles and other evidence documenting gaps in veterans' health services and discussing the federal government's initiatives to improve care for those who have served our country. The letters and news articles reflect significant public interest in supporting U.S. veterans' causes and show the importance of developing and maintaining effective programs that meet their needs.

B. Well Positioned to Advance the Proposed Endeavor

The Petitioner submitted numerous support letters describing his expertise and record of success in his past work relating to veterans' affairs. For example, [REDACTED] Deputy Assistant Secretary of [REDACTED] attested that the Petitioner "has been a driving force between [the U.S. and the U.K.] in the support of Wounded Warriors." [REDACTED] further indicated: "In his three years at the [REDACTED] I have seen firsthand the significant impact [the Petitioner] has made on our active duty and veteran support programs, as well as our support programs for military families." In addition, [REDACTED] identified specific projects coordinated by the Petitioner that "had a direct impact in supporting [U.S.] veterans and wounded warriors."

In discussing the Petitioner's role as leader of the [REDACTED] Deputy Chief of Staff for [REDACTED] [REDACTED] noted that the Petitioner "was able to work in partnership with the [REDACTED] and [REDACTED] to allow the United Kingdom's participation in three consecutive [REDACTED] programs." She further stated that he "developed and implemented a series of initiatives to connect public and non-profit organizations in the United Kingdom and the U.S. to benefit Wounded Warrior and Veterans['] priorities."

In addition, [REDACTED] Principal Director for the Office of [REDACTED] [REDACTED] at [REDACTED] indicated: "Without his leadership, and significant impact, we would not have realized the considerable success we have seen in the areas of veteran job placement, re-integration into the

³ [REDACTED] chairs the [REDACTED] and vice-chairs the [REDACTED]

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civilian community, and expansion of critical services to the wounded and their families.” [REDACTED] further stated:

Of significant note has been his linking, and understanding, of the U.S. and U.K. charitable sector with the military establishments. I know of no other task force member that has the connections and understanding of these charitable sectors and the ability to turn that understanding into results. Tangibly, this has meant that [the Petitioner] has enabled millions of dollars in charitable efforts to be productively connected with Service organizations on both sides of the Atlantic that have saved and changed Service Members’ lives during their recoveries. Without him, we would not have made those links.

[REDACTED] Principal Owner of the [REDACTED] a government affairs consulting firm, noted that the Petitioner’s “close relationships through the veterans community have directly brought the U.K. and U.S. closer together in a meaningful way on collaborative projects in the fields of veterans employment and veterans and families care.” In addition, [REDACTED] explained that “[the Petitioner], more than any other person, has had the opportunity to interact at the nexus of U.S. and U.K. policy and is equipped to identify and address similarities and differences in policies involving military and veterans issues.” For instance, [REDACTED] Director of Research and Policy for [REDACTED] the largest chapter-based military family organization in the U.S., stated that the Petitioner was instrumental in connecting her organization “with the U.K.’s governing body [REDACTED] which oversees all of its Military and Service charities. This will allow us to share best practices, ideas, and initiatives, in both the U.K. and the U.S.A.”

[REDACTED] a freelance journalist and producer for [REDACTED] and [REDACTED] indicated that she encountered the Petitioner through their work with the aforementioned publications’ annual [REDACTED]. She noted that the Petitioner’s “support in identifying topics of import and powerful speakers to discuss them effectively helped to bridge the divide between civilians and the military in this country.”

[REDACTED] project director for the [REDACTED] an international wounded warrior multi-sport competition, stated: “[The Petitioner] partnered with us in developing the [REDACTED] in the U.S. He was directly involved in securing a 100 strong team of United States wounded warriors and veterans to compete in the games and to enable their families to travel with them” With respect to the Petitioner’s standing in the field, [REDACTED] concluded that “[m]any people care about veterans but few are as well placed to make such a substantive and positive impact on their lives.”

Regarding his plans for future work as a consultant, the Petitioner submitted a business plan for his proposed company, [REDACTED]. The plan included details about the types of services he would offer, the fee structure he would use, the types of clients he would serve, and the marketing strategy he would apply. The plan also contained a list of identified potential clients, as well as sales and staffing projections. In support of a very detailed operating budget within the business plan, the Petitioner provided financial statements demonstrating sufficient funds to cover the start-up costs of the company.

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The Petitioner also provided communications from several prospective clients, including non-profit veterans' organizations and consulting companies, expressing their eagerness to use his services. [REDACTED] Chief Executive Officer (CEO) of [REDACTED] indicated her interest "in bringing him in to work with us here at [REDACTED] [The Petitioner's] experience in this field and in particular knowledge and capacity within both the U.S. and U.K. arenas make him a considerable asset." Similarly, [REDACTED] founder and chairman of [REDACTED] a consultancy that offers strategic guidance for effective philanthropy, indicated his company's desire to collaborate with the Petitioner "to help steer us on issues and projects for our clients who are interested in supporting [veteran's causes]." Additionally, in an email dated July 18, 2014, [REDACTED] expressed interest in collaborating with the Petitioner in a consulting role. Furthermore, [REDACTED] CEO of [REDACTED] an international media and marketing consulting firm, stated that the Petitioner's "advice and consulting expertise is highly valued by [REDACTED] added that the Petitioner's "continued work with charitable organizations serving our nation's military will be possible through residency and green card status."

As detailed above, the significance of the Petitioner's past projects in the field is corroborated by documentation of peer, business, military, philanthropic, and government praise for his work. In addition, he has submitted a thorough business plan offering detailed information about the nature of the services he intends to provide, and the credibility of the plan is supported by evidence of multiple communications from potential clients and collaborators. The Petitioner also provided financial statements reflecting sufficient funding to support his business plan. The Petitioner's experience and expertise in his field, business plan, and the significance of his role in veteran advocacy programs position him well to advance his proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

The Petitioner possesses considerable experience and expertise in coordinating projects that support U.S. veterans and wounded warriors. Based on his intention to start a consultancy firm through which he will be self-employed, it would be impractical for him to obtain a labor certification. The record demonstrates the immense value in improving programs and assisting organizations that provide support and advocacy for U.S. veterans and wounded warriors. Furthermore, the Petitioner has a past record of success in the areas of veteran job placement, re-integration of veterans into the civilian community, and expansion of critical services to the wounded and their families, and he has shown that several organizations in the field are eager to make use of his services as a consultant. For these reasons, we find the Petitioner has established that the United States will benefit from his contributions even assuming that other qualified U.S. workers were available to perform these critical functions. Therefore, we conclude 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.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established eligibility for and otherwise merits a national interest waiver as a matter

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of discretion. Accordingly, the Petitioner has met his burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is sustained.

Cite as *Matter of E-C-H-*, ID# 77734 (AAO Dec. 27, 2016)