



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

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

MATTER OF L-R-R-

DATE: AUG. 21, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a metallurgical engineer, 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 the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and argues that she is eligible for a national interest waiver due to her skills, achievements, expertise, and experience in metallurgy. In May 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, she provides further evidence and contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss 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. . . . [T]he 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* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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 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

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*).

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 qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

Since February 2016, the Petitioner has worked as a metallurgical engineer for [REDACTED] a manufacturer of premium steel wire and wire products. From January 2008 until June 2015, she was employed as a principal mechanical engineer at [REDACTED] an engineering company that provides project delivery and consulting services in the oil and gas industry. In addition, prior to her graduate studies at the [REDACTED] from August 2004 to June 2007, she served as military officer and metallurgist engineer for the [REDACTED]

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to continue her work for [REDACTED] as a metallurgical engineer.⁴ According to her Form ETA-750B, Statement of Qualifications of Alien, and a letter from [REDACTED] general manager, the Petitioner's duties include performing metallurgic and mechanical laboratory analyses for rod material and wire products, evaluating material from rod suppliers, designing and planning a new galvanizing plant for the company's California operations, and preparing for the arrival of a new mesh machine. Her proposed work also involves conducting fracture mechanics and failure analysis for nonconforming products, serving as lead auditor for transitioning to the [REDACTED] quality management system, performing high tensile strength mesh testing, and conducting plant operators' training.

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

³ The Petitioner received a master of science degree in mechanical engineering from the [REDACTED] in June 2007.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about this prospective position to illustrate the capacity in which she intends to work.

█ states that the Petitioner's "contributions for new technology implementation, quality assurance, and safety will assure success to our future products and projects." We find that the Petitioner's proposed metallurgical engineering work has substantial merit, as it is aimed at supporting █ pursuit of new products, enhancing company production protocols, and updating its manufacturing methods.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of her work. Specifically, we requested documentation demonstrating that her proposed work has broader implications for the metallurgical engineering field or the steel and wire industry.

In response, █ indicates that █ "is currently planning to extend our reach further into U.S. markets and also internationally. . . . We produce about 4,500 tons of wire and wire products a month to fulfill the needs of USA companies in the fields of: construction, oil and gas, aerospace, mining, industrial, and agricultural." █ further states that the Petitioner is a valuable asset for his company, a national leader in "wire and wire products," and that "[s]he is directly impacting in a positive way our customers in the fields of construction, oil and gas, aerospace, mining, industrial and agricultural."

In addition, counsel's brief in response to our RFE asserts that the Petitioner "will substantially benefit prospectively the national interest of the United States in defense matters and oil and gas extraction." For example, it indicates that she has capacity to work as a "research consultant" for the oil and gas industry, she argues that "[t]he country needs experts capable of promoting the design and construction of refineries that produce the lowest ecological impact possible by reducing emission and contamination to the air." The brief further states that her consulting work for refineries will improve efficiency, increase production, reduce costs, and maximize plant operations.

Regarding the Petitioner's capacity to serve the defense aviation industry, counsel contends that "she can work as a consultant and researcher opening new avenues of investigation in the aerospace materials field that will serve this country in safety, security, and transportation." He adds that her work as a "researcher" will contribute to "the development of more complex light alloy composite materials for innovative applications involving magnetic properties, low density, and reduced fabrication costs to be used in aviation and aerospace structures."

This prong of *Dhanasar*, substantial merit and national importance, focuses on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In the present matter, while counsel's most recent brief references the Petitioner's ability to work as a consultant, it does not provide sufficient details about the capacity in which she would do so to demonstrate the potential implications of such work. Further, counsel's remarks are inconsistent with other statements and evidence in the record, including the initial appeal brief and a personal statement from the Petitioner, all of which reflects that she will work for █ as a metallurgical engineer.⁵ The submitted

⁵ Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing

evidence does not indicate that her specified endeavor for this company involves working as a “research consultant” for the oil and gas industry or as a “consultant and researcher” in the defense aviation industry. As such, we will evaluate the national importance of the Petitioner’s proposed endeavor working as a metallurgical engineer.

The Petitioner has not established that her proposed work for [REDACTED] has implications beyond her company and its customers at a level sufficient to establish the national importance of her endeavor.⁶ While [REDACTED] indicates that the Petitioner’s work “will affect the variety of national industries” served by [REDACTED] the record does not show that the specific work she proposes to undertake offers original innovations that advance the steel and wire industry, or otherwise has broader implications in the field of metallurgical engineering. Moreover, as discussed above, the record does not corroborate the assertion that the Petitioner’s proposed endeavor stands to “substantially benefit prospectively the national interest of the United States in defense matters and oil and gas extraction.” As the Petitioner has not established that her specific endeavor’s prospective impact supports a finding of national importance, she has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications. The Petitioner submitted evidence of her graduate research work (an article in [REDACTED] and her master’s thesis) and documentation of seven articles that cited to her findings.⁷ She also offered reference letters from colleagues discussing her research projects at [REDACTED] and her work experience in the field of metallurgical engineering. In response to our RFE, the Petitioner provides the aforementioned letter from [REDACTED] a letter from [REDACTED] human resources and payroll manager describing the process through which the Petitioner was selected for her current position, an updated résumé, and copies of recommendation letters that were previously submitted. Additionally, she submits a letter discussing her academic background, work experience, and personal information about her family situation.

As discussed below, we find that the Petitioner’s past experience in metallurgical engineering renders her well positioned to advance her proposed endeavor aimed at supporting [REDACTED] production and manufacturing initiatives. For example, [REDACTED] describes the Petitioner as “an experienced professional in the metallurgy and mechanical engineering fields” and states that she “has been a truly

Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

⁶ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. While [REDACTED] emphasizes his company’s position as “the leader and largest producer of premium steel wire and wire products in [the] USA,” the record does not demonstrate that an impact on this single company and its projects necessarily equates to a broader impact on the industry, or otherwise has broader implications in the field of metallurgical engineering.

⁷ She also asserted that she presented her graduate work at three scientific conferences, but the record does not include documentary evidence to support her claim.

valuable asset for our organization.” [REDACTED] further indicates that she evaluated and determined “applicability for around 100 tons of high carbon and low carbon steel rod material that was imported . . . from Chile and Peru.” In addition, he contends that [REDACTED] was seeking “an expert in Metallurgy with key areas of experience in lab research, quality control, materials test, and who was bilingual in English-Spanish” and that the Petitioner was “the only Engineer that fulfilled all of our requisites in education and diverse expertise.”

In addition to her work for [REDACTED] the record includes letters discussing the Petitioner’s graduate research at [REDACTED]. For instance, her thesis advisor, [REDACTED] director of the [REDACTED] indicated she developed “a new technique to obtain a brand new composite made of aluminum and magnesium diboride” as part of her graduate studies. He further noted that the Petitioner “set up a reproducible and reliable method to fragment via high-energy ball milling, metal-based diboride particles for a number of applications” and that her “method proved adaptable to many other diboride particles.”⁸

The record includes additional recommendation letters describing her work as a mechanical engineer for [REDACTED] materials applications team and as a metallurgist engineer for the [REDACTED]. The evidence discussed above is sufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor of supporting [REDACTED] production and manufacturing projects.⁹ Accordingly, she has established that she satisfies the second prong of the *Dhanasar* framework.

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

As explained above, 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. Here, the Petitioner claims that she is eligible for a waiver due to her knowledge and experience, the impracticality of labor certification, and a lack of qualified U.S. workers for her current position. However, as the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a

⁸ Although the Petitioner’s graduate work at [REDACTED] involved investigation and development of a new metallurgy technique, we note that her proposed endeavor at [REDACTED] is not focused on conducting original research. Nevertheless, had the Petitioner demonstrated that she would be primarily engaged in metallurgy research, the Petitioner has not shown that her metallurgy research constitutes a record of success or progress in her field, or a has garnered degree of interest in her work from relevant parties, that rises to the level of rendering her well positioned to advance such an endeavor.

⁹ While we find that the Petitioner is well positioned to support [REDACTED] production and manufacturing operations, the evidence is not sufficient to demonstrate that her past work there has affected the metallurgical engineering field beyond her company’s projects, or that she has otherwise been integral to advancing product or process innovations that have garnered significant interest in the steel and wire industry. Therefore, had the Petitioner met the first prong by demonstrating that her proposed endeavor has broader implications in her field (such as by influencing manufacturing practices in the metallurgical engineering field or developing innovative production methods that affect her industry), the record does not show that her background and progress in those broader endeavors render her well positioned to advance them.

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national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of L-R-R-*, ID# 448049 (AAO Aug. 21, 2017)