



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

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

MATTER OF N-C-

DATE: DEC. 14, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a research and development 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he 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 additional documentation and contends that he is eligible for a national interest waiver under the *Dhanasar* framework. He notes that while two requests for evidence (RFEs) were issued by the Director, neither afforded him an opportunity to establish that he meets the standards set forth in *Dhanasar*.

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.<sup>1</sup> *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.

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<sup>1</sup> 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*).

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.<sup>2</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

The Director found that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Petitioner, however, provided his Ph.D. in mechanical engineering (2009) from the [REDACTED] and a copy of his official transcript. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree, and the Director's finding on this issue is withdrawn.

### B. National Interest Waiver

The remaining 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. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The denial decision stated that "since the petitioner did not submit this required evidence, USCIS must deny the Form I-140." With the appeal, the Petitioner offers two properly signed and fully executed ETA-750B forms. Therefore, the Director's finding on this issue is withdrawn.

The Petitioner contends that the Director's RFEs did not offer him "a chance to establish meeting the standards of *Matter of Dhanasar*," as described in the denial decision. We note that the Director may, as a matter of discretion, request additional evidence if the record does not establish eligibility, but he is not required to do so. *See* 8 C.F.R. § 103.2(b)(8). Regardless, the Petitioner has had an opportunity to address the Director's findings on appeal, and we review the record on a *de novo* basis.

In the decision denying the petition, the Director noted that the Petitioner had "not submitted a detailed description of the proposed endeavor." Under each prong, the Director concluded that the

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

Petitioner had not submitted evidence satisfying the relevant requirements, but did not mention or discuss the documentation in the record. The record initially contained a January 2015 letter from [REDACTED] listing only the Petitioner's job "title of Tech Prof-Software Development" and salary. In response to the Director's November 2016 RFE, the Petitioner identified "Principal Tech Professional R&D Software Development" as his "most recent occupation," but offered no further discussion of the nature and merit of his proposed endeavor.

As the Petitioner is applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer. Nevertheless, information about the nature of his proposed endeavor is necessary for us to determine whether it has substantial merit and national importance; whether he is well positioned to advance such an endeavor; and whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Although the Director's decision did not include a meaningful discussion as to why the evidence presented was insufficient, the record supported the determination that the Petitioner did not provide adequate information regarding his proposed endeavor. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

On appeal, the Petitioner provides additional information and evidence regarding his proposed endeavor. However, for the reasons discussed below, we find he has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

1. Substantial Merit and National Importance of the Proposed Endeavor

In a letter accompanying his appeal, the Petitioner indicates that he is "currently a senior research and development scientist working at [REDACTED] an engineering consulting and software development company. He asserts that he intends to continue his "work in the engineering consulting business at [REDACTED] and will use his skills "to diagnose industry challenges, propose solutions in the form of mathematical models and simulations, and to develop physics based algorithms and software solutions." The Petitioner further states that he is presently "working on developing software for Torque & Drag, Hydraulics, Drilling Dynamics, and Hole Cleaning and Completion to improve planning and tracking oil & gas drilling processes."

The appellate submission includes a letter from [REDACTED] Chief Executive Officer of [REDACTED] stating that the Petitioner's work "provides crucial benefits to the company and our U.S. clients." [REDACTED] notes that his company supports "top Original Equipment Manufacturers and Tier1 service providers in automotive [*sic*], and major players in the oil & gas as well as consumer goods industry." He further explains that [REDACTED] helps "clients in improving their processes and solving their needs, by providing them expertise through a wide range of scientific, numerical modeling and engineering simulation solutions."

With respect to the Petitioner's proposed endeavor, [REDACTED] indicates that his projects include devising advanced drilling dynamics' models, predicting and understanding material failure, and solving clients' engineering challenges. In addition, he notes that the Petitioner's efforts involve

developing: advanced analytical and numerical methods for scientific software, new material models for rubbers and polymers, and methods for fluid structure interactions. We find that the Petitioner's work has substantial merit, as it is aimed at supporting [REDACTED] consulting services and development of custom software solutions for the company's clients.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. The Petitioner contends that his "work in the fields of mechanical, materials and computational science and engineering . . . has implications for improvements in technology, industry, manufacturing, transportation, and energy," but he does not discuss the breadth of those implications or provide supporting documentation. However, the Petitioner has not established that his proposed work for [REDACTED] has implications beyond his company and its clients at a level sufficient to establish the national importance of his endeavor.<sup>3</sup> While [REDACTED] contends that Petitioner's work will provide a benefit to the wide range of U.S. industries that [REDACTED] is "supporting such as Automotive, Petroleum, and Consumer goods," he does not sufficiently explain or demonstrate how the work stands to affect these broader industries. Nor does the record show, for instance, that the specific work the Petitioner proposes to undertake offers original innovations to advance these overall industries, or that it otherwise has wider implications in the software development field. As the Petitioner has not established that his specific endeavor's prospective impact supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework.<sup>4</sup>

### C. 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 his curriculum vitae, academic records, employment verifications, training certifications, student awards, and [REDACTED] membership. He also provided evidence of his graduate research work (a conference presentation and two articles in [REDACTED] and documentation of articles that cited to his findings. In addition, the Petitioner offered reference letters discussing his spark plasma sintering metallurgy research projects at the [REDACTED] and drillstring dynamics modeling project at [REDACTED]. On appeal, the Petitioner provides the aforementioned letter from [REDACTED] and further citations to his graduate research work. He also submits a letter discussing his academic background, engineering skills, past work experience, and present job duties and projects at [REDACTED].

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<sup>3</sup> 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.

<sup>4</sup> While the record indicates that the Petitioner performed and published metallurgical research as part of his Ph.D. studies at the [REDACTED] he has not identified conducting and publishing metallurgy research as his proposed endeavor. Rather, the record shows that he intends to work as an engineering consultant and software developer for [REDACTED].

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor aimed at supporting [REDACTED] engineering consulting work and software development projects. For example, [REDACTED] states that the Petitioner used "his knowledge and background to develop tools and ways to improve drilling in typical and extended-reach wells" and this work had a "sizable impact on the company's Research and Development strategy." In addition, [REDACTED] a senior technical leader at [REDACTED] indicates that the Petitioner led "the efforts of architecting a new software solution that replaces long time [REDACTED] fluid completion and drilling fluid applications." Furthermore, [REDACTED] global simulation team manager at [REDACTED] asserts that he and the Petitioner worked on a project to devise "a module of substantial well development software" and that the Petitioner provided solid and insightful "advice and guidance on numerical analysis, algorithm development, and complex mathematically-related code development."

In addition to his work experience with [REDACTED] and [REDACTED] the record includes letters discussing the Petitioner's graduate research at [REDACTED]. For instance, with respect to the Petitioner's articles in [REDACTED] [REDACTED] a senior material scientist at [REDACTED] states that he considers the Petitioner's "2007 and 2009 papers on the subject of material sintering to be very valuable" and that he cited to the findings in his dissertation. The appellate submission includes citation evidence from [REDACTED] reflecting that the Petitioner's 2007 and 2009 articles in [REDACTED] have been cited to 16 and 14 times, respectively.

The evidence discussed above is sufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor of supporting [REDACTED] engineering consulting and software development projects.<sup>5</sup> Accordingly, he has established that he satisfies the second prong of the *Dhanasar* framework.

#### D. 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 he is eligible for a waiver due to his knowledge and experience, accomplishments that are greater than those of his peers, and the impracticality of labor certification. However, as the Petitioner has not established the national importance of his proposed

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<sup>5</sup> While we find that the Petitioner is well positioned to support [REDACTED] engineering consulting and software development projects, the evidence is not sufficient to demonstrate that his past work has affected the software development field beyond his company's projects, or that he has otherwise been integral to advancing product or process innovations that have garnered significant interest in the petroleum or consumer goods manufacturing industries. Therefore, had the Petitioner met the first prong by demonstrating that his proposed endeavor has broader implications in his field (such as by influencing practices in the mechanical or computational engineering fields or by developing innovative production methods that affect the petroleum or consumer goods manufacturing industry industries), the record does not show that his background and progress in those broader endeavors render him well positioned to advance them.

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endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a 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 he 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 N-C-*, ID# 860831 (AAO Dec. 14, 2017)