



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

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

MATTER OF J-K-S-

DATE: MAY 15, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a public administration policy professor and the director of a development institute in Korea, 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 a 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 he had not established that a waiver of a job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal.

In February 2017, we issued a request for evidence (RFE) asking the Petitioner to provide additional documentation of his qualifications as a member of the professions holding an advanced degree, and evidence pertaining to his eligibility for the underlying visa classification and satisfying the three-part framework set forth in *Dhanasar*. In response, the Petitioner submits additional documentation and contends that he 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. . . . 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.<sup>1</sup> *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

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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*).

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.<sup>2</sup>

## II. ANALYSIS

### A. Advanced Degree

The Petitioner previously provided "Certificate(s) of Graduation" from [REDACTED] (Korea) stating that he received a Doctor of Public Administration (1998) and a Master of Public Administration (1991). In response to our RFE, he offers an academic credentials evaluation indicating that his university degrees are the "foreign equivalent" of a U.S. doctorate and a U.S. master's degree in public administration. *See* 8 C.F.R. § 204.5(k)(3)(i)(A). Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree.

### B. National Interest Waiver

The next 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. At the time of filing, the Petitioner was employed as a professor of public policy, public administration, and social welfare at [REDACTED] in [REDACTED] South Korea. Additionally, he was serving as director of the [REDACTED] organization focused on enhancing social systems in the region. He stated that he is "[a] scholar, public administration figurehead, and community developer deeply involved with the challenging and critical subject matter of social welfare." In Part 6 of the Form I-140, under "Basic Information about the Proposed Employment," the Petitioner listed a job title of "Public Administration Policy Professor," but did not offer a further description of his proposed work.

In a letter accompanying the petition, [REDACTED] vice chancellor of [REDACTED] in [REDACTED], offered the Petitioner a professorship at his school contingent upon his obtaining U.S. lawful permanent residence. In response to the Director's April 2016 RFE, the

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

Petitioner submitted a June 2016 letter from [redacted] chief executive officer of [redacted] a rehabilitation and assistive technology company in [redacted] Korea, indicating [redacted] intentions to have the Petitioner assist in establishing the first American branch of [redacted]. The Petitioner also offered a [redacted] memorandum entitled "Appointing an advisor and marketing plans to proceed with setting up a corporation in the USA."<sup>3</sup> In addition, the RFE response included letters of support from representatives of [redacted] of [redacted] and [redacted] (Missouri) expressing their interest in future collaborations with the Petitioner.

With respect to his intended employment in the United States, the Petitioner stated that "as depicted in the letters submitted by potential future employers," he would work in the following capacities:

- i) administering the establishment of socially progressive programs and assisted living product companies in America by benefitting special needs individuals, and/or ii) working as an instructional or academic research professor at a U.S. university within the subject matters of social welfare, social justice, public administration, and municipal planning.

In our RFE, we requested that the Petitioner provide "clarification as to which one or more of these endeavors" he intended to pursue in the United States.<sup>4</sup> We further stated: "If your intention is to follow multiple endeavors, you should provide information and evidence regarding your specific plans for each undertaking and explain how your time will be divided among them." Furthermore, we asked for documentation of any progress in establishing [redacted] corporate entity in the United States and a copy of the "2016 Business Plan" that was listed as "Attachment 1" at the bottom of the [redacted] memorandum.

In response, the Petitioner resubmits [redacted] June 2016 letter and the [redacted] memorandum. Additionally, he provides what he characterizes as a "Memorandum Attachment: 2016 Business Plan for [redacted]. The submitted attachment, however, is not [redacted] business plan for setting up a corporation in the United States. Rather, the Petitioner has offered a document entitled [redacted].

This proposal discusses a collaborative project between [redacted] and students from [redacted] to provide rehabilitative devices to disabled children in the Philippines. The record lacks sufficient evidence detailing the Petitioner's intent to establish "an American subsidiary branch of [redacted]" in [redacted] and providing specific information about [redacted].

<sup>3</sup> The [redacted] memorandum briefly references the company's "action plan" for "setting up a local corporation" in [redacted]. At the bottom of the memorandum, a "2016 Business Plan" is listed as "Attachment 1," but the record did not include a copy of this plan.

<sup>4</sup> 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.

the intended business, such as projected staffing levels, the nature of the services it will provide, and the client pool it will serve.

In addition, the Petitioner's response states that he will enter into a partnership and collaborations with [REDACTED] in [REDACTED] to create "opportunities to educate, support, and employ thousands of special needs individuals." The Petitioner also indicates that he will collaborate with [REDACTED] of [REDACTED] in providing educational literacy programs, shelter, job training, medical care, and wheelchairs and other aids for special needs individuals. Lastly, as a research professor at [REDACTED] in Missouri, the Petitioner claims that "he will become a valuable asset to the University and [REDACTED] municipality."

Despite our request for further clarification, the Petitioner does not provide sufficient information and evidence regarding his specific plans for each undertaking, or explain how his time will be divided among them. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The record does not clearly explain the Petitioner's proposed endeavor such that we are able to determine, without additional information and evidence, that his proposed work will have both substantial merit and national importance and that he is well positioned to advance his proposed endeavor. Furthermore, the Petitioner has not established 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

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 J-K-S-*, ID# 288787 (AAO May 15, 2017)