



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

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

MATTER OF F-M-M-M-

DATE: AUG. 21, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a geophysicist, 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 Texas 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 the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence 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. . . . [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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of 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.

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

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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*).

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

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> 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.<sup>4</sup>

At the time of filing, the Petitioner was employed as a lead consultant for [REDACTED] a company that provides business consulting, information technology, and outsourcing services.<sup>5</sup> His appellate submission includes information about [REDACTED] and its oil and gas practice.

With respect to the substantial merit and national importance of the proposed endeavor, the Petitioner indicates that his "job involves working on geophysical data processing and interpretation to help [REDACTED] partners in the field of oil and gas industry."<sup>6</sup> The record contains an August 2017 letter from [REDACTED] a principal consultant for [REDACTED] stating: "[The Petitioner's] current involvement aims to tackle problems our clients face. His job duty includes: geophysical data processing, analysis, modeling and optimization." In addition, the Petitioner presented his August 2016 job offer from [REDACTED] for his lead consultant position. On appeal, the Petitioner indicates that his "consulting with [REDACTED] is not limited [sic] oil and gas industry. As per his job agreement, [the Petitioner] is required to help [REDACTED] clients wherever his skills and knowledge will fit in tackling

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

<sup>3</sup> The record reflects that the Petitioner received a Ph.D. in geology (2013) from [REDACTED].

<sup>4</sup> The Director's decision incorrectly stated that the Petitioner "misrepresented his employment history" on his Form ETA-750B, Statement of Qualifications of Alien. The record does not support this conclusion. With the petition, the Petitioner provided two separate forms for part 15, "Work Experience." The Director appears to have overlooked the second form covering the Petitioner's work experience from June 2013 to the present. Accordingly, the Director's finding on this issue is withdrawn.

<sup>5</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his position with [REDACTED] to illustrate the capacity in which he intends to work.

<sup>6</sup> He elaborates further on his proposed endeavor stating that he will support: "optimization/ML [maximum likelihood] analyses using both geophysics-based simulations as well as real-world collected data," "development of geophysics-based and data-driven models to match real-world data collections," and "development of optimization/ML algorithms to enable prediction of complex nonlinear system behavior based on limited geophysical data." He also asserts that he will "[p]erform verification, validation, and calibration of existing simulation models to better match real-world observed performance through parameter updates and software code changes."

their challenges.” We find that the Petitioner’s proposed consulting work aimed at serving [REDACTED] clients has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. In determining national importance, the relevant question is not the importance of the fields or industries in which the individual will work; instead we focus on the “specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner’s statements reflect his intentions to provide a valuable service to [REDACTED] prospective clients, he has not offered sufficient evidence to demonstrate that his proposed endeavor is of national importance. In the same way that *Dhanasar* finds that a classroom teacher’s proposed endeavor is not nationally important because the effects of the work are primarily limited to the teacher’s school or district, we find that the proposed endeavor in this case will not sufficiently extend beyond the Petitioner’s clients to impact the oil and gas industry more broadly than his specific consulting projects.<sup>7</sup> Nor has he shown that his work for [REDACTED] would have broader implications for the field of geophysics. Accordingly, the Petitioner’s proposed work for this company does not meet the first prong of the *Dhanasar* framework.

In addition to proposing to continue his consulting work for [REDACTED] the Petitioner asserts that he “is planning to join the geophysics laboratory at [REDACTED] again as a full-time researcher in two years once he has had enough exposure to the current challenges in the industry which will help him focus his research on addressing such challenges.” The record, however, does not include supporting documentation from his university to corroborate the Petitioner’s assertion that he will pursue research at its geophysics laboratory in two years, nor has he identified the specific research projects he will undertake while working at the university.<sup>8</sup>

Furthermore, in response to a request for evidence from the Director, the Petitioner asserted that he is currently involved in research outside of his work with [REDACTED], and will continue contributing to these “three projects of high national interest to the United States”: (1) the [REDACTED] Program ([REDACTED]), (2) [REDACTED] research, and (3) Continental rifting research. For the reasons discussed below, we find that the Petitioner has not sufficiently documented his involvement in these projects, demonstrated his specific role, or shown that his proposed work supports a finding of national importance.

Regarding the [REDACTED] project in Utah, the Petitioner asserts that he “is actively contributing in one of the [REDACTED] projects in the [REDACTED] basin in the western United States to test the extensional detachment paradigm. . . . [The Petitioner] is utilizing the iron reduction-oxidation processes to help reduce the distribution and levels of Arsenic and trace metals in groundwater.” He submits an October 2011 article in *Scientific American* which describes how many unregulated and unmonitored private drinking water wells in the United States are contaminated with arsenic and other potentially

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<sup>7</sup> See *Id.* at 893.

<sup>8</sup> In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

dangerous elements. In addition, the Petitioner provides a June 2016 email sent to him and more than sixty other individuals who are either associated with the [REDACTED] or “potentially interested in participating in future deployments.”<sup>9</sup> The information and evidence he offers, however, does not illustrate the capacity in which the Petitioner will work on the [REDACTED] project or the national importance of his proposed activities.

With respect to contributing to the [REDACTED] research project, the Petitioner proposes to collaborate with other scientists “to help address many scientific questions that would help us understand the microbial behavior within hydrocarbon sites.” While he asserts that advancing research at this natural field laboratory in [REDACTED] Minnesota “will enable scientists to understand and improve the techniques for oil remediation as well as oil exploration,” he does not offer supporting evidence detailing his involvement in this project or demonstrating the national importance of his work.

Finally, regarding his intent to pursue continental rifting research, the Petitioner contends that he is “working with distinguished scientists on submitting proposals to the National Science Foundation on [REDACTED]” He provides a copy of a research proposal entitled “[REDACTED]”<sup>10</sup> In addition, the Petitioner submits a May 2017 invitation he received to attend the Society of Exploration Geophysicists’ “Injection Induced Seismicity” workshop and a June 2017 email requesting that he “submit an abstract” for presentation at the 2nd International Convention on Geosciences and Remote Sensing (November 2017). The aforementioned evidence, however, does not indicate the capacity in which he will work on the aforementioned research project or demonstrate the national importance of his proposed research.

As the Petitioner has not sufficiently demonstrated that his proposed work supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavors as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

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<sup>9</sup> The nature of the Petitioner’s proposed involvement in the [REDACTED] is not discussed in this email. The email’s sender, [REDACTED] reports that in March 2017 the [REDACTED] “team recovered a 1-m core sediment core from 180-m depth near [REDACTED] Utah with a frozen plug at the bottom.” [REDACTED] also notes that much of the budget for future work on this project “was consumed by setbacks and delays” and that he can no longer guarantee funding for scientists’ travel to Utah. Further, his email does not identify the Petitioner as a member of the [REDACTED] team in Utah, or otherwise explain the Petitioner’s role on the [REDACTED] future projects.

<sup>10</sup> The Petitioner is not identified as an author of this research proposal, nor is there evidence demonstrating the national importance of this area of research.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-M-M-M-*, ID# 1439874 (AAO Aug. 21, 2018)