



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

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

In Re: 5527211

Date: DEC. 10, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a semiconductor manufacturer, seeks second preference immigrant classification for the Beneficiary 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Beneficiary 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 documentation and a brief asserting that the Beneficiary is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's 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 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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.

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 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

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*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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.³

II. ANALYSIS

The Director found that the Beneficiary qualifies as a member of the professions holding an advanced degree.⁴ 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. For the reasons discussed below, we find that the Petitioner has not sufficiently demonstrated the national importance of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner indicated that it intends to continue to employ the Beneficiary as a process engineer.⁵ It states that the Beneficiary's proposed work involves designing and planning the layout for material processing operations including hardening, washing, laminating, etching, engraving, polishing, painting, and plating. In addition, the Petitioner asserts that the Beneficiary's work is aimed defining roadmaps and establishing flow, procedure, and equipment configurations for new technology processes; and developing and driving process improvements on material and equipment to meet quality, reliability, cost, yield, productivity and manufacturability requirements. It further contends that the Beneficiary's undertaking involves planning and conducting experiments to fully characterize the process throughout the development cycle; establishing process control systems and developing strategies to resolve problems; and designing, creating, and supporting processes for high volume manufacturing.

On appeal, the Petitioner maintains that the Beneficiary's "proposed endeavor, as established in the original petition, is that of a process engineer at [the Petitioner], responsible for designing and planning the layout for material processing operations for [the Petitioner's] microchips." It provides a letter from [redacted], an engineering manager with the Petitioner, who further discusses the Beneficiary's proposed work relating to "dry etch process technology at [the Petitioner]" and its "unique contribution to the company." [redacted] notes that this work involves "keeping up the factory etch equipment's 100% utilization for maximum cost benefit." He further explains that the Beneficiary's proposed endeavor is focused on:

[D]eveloping nanoscale patterning, designing process flow to match etch and electrical performance requirements, studying plasma stability and reactivity, working on etcher platforms, tools design and improvements, performing daily cross sectional imaging and chemical analysis on wafers that undergo dry etch treatment, development of

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The record reflects that the Beneficiary received a Ph.D. in electrical engineering from [redacted] University in 2016.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

etch/deposition and ash recipes as part of complex etch recipes, development of atomic layer processing which include[s] atomic layer deposition and atomic layer etching, and developing process etch recipes with high aspect ratio features for the next generation of [the Petitioner's] process technology.

The record includes information showing that the Petitioner's technologies are found in numerous consumer electronics products. The Petitioner also submitted an article discussing the challenges facing the semiconductor industry and their consequences for the U.S. economy and national security, and recommendations for ensuring U.S. leadership and innovation in semiconductors. In addition, the appellate submission contains job descriptions for two process engineer positions with the Petitioner. While this documentation helps show the Beneficiary's proposed work as a process engineer has substantial merit, the evidence is not sufficient to demonstrate this endeavor's national importance.

The Petitioner asserts that the Beneficiary's "employment has national importance by virtue of its national and global implications within the area of semiconductor manufacturing and its direct link to the substantial positive economic effects of [the Petitioner's] continued success as a company." It offers information about the scale of its business operations and its economic impact on the U.S. economy. The Petitioner contends that it "employs more than 50,000 individuals at campuses across the country" and that the positive economic effects of its business operations are substantial, including generating billions in gross revenue and federal tax payments. In addition, the Petitioner provided remarks from former U.S. President [redacted] discussing the company's creation of U.S. manufacturing jobs.

In determining national importance, the relevant question is not the importance of the industry in which the individual will work or the past success of his employer; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Beneficiary's particular undertaking. While the Petitioner asserts that the national importance of the Beneficiary's endeavor is evident from the scale of the company's overall business operations, it has not demonstrated that the economic implications of these operations would be attributable to the Beneficiary's process engineering projects to an extent that his proposed work holds national importance. For example, the Petitioner has not demonstrated that the Beneficiary's proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Here, the Petitioner has not shown that the wider economic effects it is claiming as a U.S. company are implications of the Beneficiary's specific proposed endeavor to provide process engineering services for its factory etch equipment. Because the Petitioner has not provided sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Beneficiary's future process engineering work, it has not shown that benefits to the regional or national economy

resulting from his projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

Furthermore, the issue here is not the broader implications of the Petitioner’s innovations in semiconductor manufacturing or the widespread utilization of its products by consumers, but rather the potential prospective impact of the Beneficiary’s specific proposed work as a process engineer. 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. Here, we find the record does not show that the Beneficiary’s proposed endeavor stands to sufficiently extend beyond his employer to impact the semiconductor manufacturing industry more broadly at a level commensurate with national importance. Nor has the Petitioner sufficiently demonstrated that the particular work the Beneficiary proposes to undertake offers original innovations that contribute to advancements in the industry, or otherwise has broader implications for the electrical engineering field. Without sufficient documentary evidence of its broader impact, the Beneficiary’s proposed process engineering work for the Petitioner does not meet the “national importance” element of the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of the Beneficiary’s proposed endeavor 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 the Beneficiary’s eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that it has not established the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.