



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

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

MATTER OF M-Z-H-

DATE: JAN. 3, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an engineering consultant, 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, 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.

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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 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 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 Petitioner presented his "Bachelor of Science in Civil Engineering" (1984) and "Master of Science in Civil Engineering" (1997) degrees from [REDACTED] of Engineering and Technology, Dhaka. The record, however, does not contain an academic credentials evaluation to establish his foreign degrees' equivalency to a United States degree.<sup>3</sup> See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(A)-(B). Accordingly, the Petitioner has adequately documented that he qualifies for classification as a member of the professions holding an advanced degree.

### B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. With regard to his proposed endeavor, the Petitioner asserts that he intends to work "as a self-employed consulting engineer/entrepreneur." He describes his future plans as follows:

On one side, I will be providing consulting engineering services to the various consulting companies as needed and requested. I will also extend engineering

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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> While the Petitioner submitted an "Informal Assessment of Qualifications for Engineers" form and an assessment results letter from the [REDACTED], this documentation does not discuss his foreign degrees' equivalency to a United States degree.

services for independent projects . . . . I will further extend my services in offering technical classes/instructions, on building codes and engineering software and engineering drafting/design as needed/demanded.

On the other side, I will engage myself towards renewable power energy sector - for example, solar power energy. I am capable of planning, designing and constructing, such projects.

The Petitioner further explains that his proposed “consulting engineering service” will provide “a wide range of structural analysis and designs of various types of structures, including various types of buildings/tall buildings/non-buildings and related structures like retaining walls, underground and overhead water tanks, various types of foundations, industrial structures etc., by applying various structural engineering software . . . .” In addition, he asserts that his company will offer “all structural engineering services from the beginning to the end of the project.” Furthermore, the Petitioner states that his company’s services will include project consulting, forensic investigations, project management, dispute resolution, restoration engineering, renewable energy engineering support, manufacturing sector stress analyses, structural engineering course instruction, and software development. We find that the Petitioner’s proposed endeavor to provide engineering consulting services to company owners, architects, and developers has substantial merit.

With respect to the national importance of the proposed endeavor, the Petitioner claims that his undertaking “will create jobs” and “will have a substantial impact on the economy of the country.” He presents a business plan that lists “Start-up Funding” requirements of \$25,000. Regarding future staffing, the Petitioner asserts that in the first year he will hire “at least one designer/draftsman” to support company projects. He further anticipates that “by the end of 3rd year, the number of staff including me will grow to 4.” In addition, his plan includes sales projections of \$200,000 in year one, \$250,000 in year two, and \$300,000 in year three.

The record includes articles describing the economic impact of home building and school construction. For example, the Petitioner offers a report from the National Association of Home Builders discussing income, jobs, and taxes generated from single-family, multi-family, and residential remodeling home building projects in a typical local area. In addition, he submits a 2011 article about construction of a hydrogen chloride (HCl) processing and packaging facility in [REDACTED] Texas and its potential benefit to domestic customers in the HCl market. The Director determined that these articles and the information the Petitioner provided about his proposed endeavor were not sufficient to demonstrate its national importance. Specifically, the Director found that the Petitioner had not shown that his proposed endeavor as an engineering consultant has implications beyond his projects and clients at a level sufficient to demonstrate its national importance.

On appeal, the Petitioner maintains that his company “will create jobs and will have a substantial positive impact on the economy.” He contends that his “proposed endeavor will start locally and gradually it will spread nationwide and globally.” In addition, the Petitioner asserts that his company

“will participate in local, national and global tenders for consultancy engineering service[s] from its office located in [REDACTED] Texas – and gradually it will spread its office presence nationally and globally.”

The Petitioner’s appellate submission includes information relating to past projects in which he claims to have participated such as the [REDACTED] project (Canada), [REDACTED] (Canada), [REDACTED] (Indonesia), and [REDACTED] (Texas). He argues that “evidence of the economic impact of some projects performed by me in the past” helps predict the impact likely to emerge from future projects relating to his proposed endeavor. The record, however, does not identify any future U.S. projects that he proposes to undertake that are similar in economic scale to the aforementioned projects. In addition, the Petitioner submits information from *Wikipedia* regarding public works programs, reports discussing the impact of construction activity and housing development, and articles about employment trends in the oil and gas industry. While this documentation helps show the merit of the Petitioner’s proposed work, the evidence is not sufficient to demonstrate the national importance of any particular engineering consulting work proposed by the Petitioner.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; 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 Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable engineering services to his company’s prospective clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In the same way that *Dhanasar* finds that a classroom teacher’s proposed endeavor is not nationally important because it will not impact the field more broadly<sup>4</sup>, we find that the Petitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond his company and its clients to impact the industry more broadly than his specific engineering consulting projects. Nor has he shown that his particular work would have broader implications for the field of structural engineering.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.. While the appeal brief mentions past projects in which he participated and

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<sup>4</sup> *See Id.* at 893.

potential job creation resulting from staffing his company, the record does not include sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future engineering consulting work. The record does not show that benefits to the regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his 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 his 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 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 M-Z-H-*, ID# 1850803 (AAO Jan. 3, 2019)