



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

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

MATTER OF A-A-, INC.

DATE: JUNE 5, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a semiconductor equipment 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). After a petitioner has established the beneficiary's 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 Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that the Petitioner 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 a brief asserting that the Beneficiary 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 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.<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 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

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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*).

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 Beneficiary qualifies as a member of the professions holding an advanced degree. 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 Petitioner seeks to employ the Beneficiary as an equipment engineer.<sup>3</sup> It indicated that the Beneficiary's "proposed endeavor is Test/Equipment Engineering at [the Petitioner], a leading supplier of semiconductor process equipment for wafer processing." In addition, the Petitioner provided the following description of his position:

[The Beneficiary] is responsible for installing new RFK's, upgrades and fixtures to the [redacted]. He reviews core concepts involved in chamber matching from tool to tool, tests gas panels, vacuum leak detectors and delivery systems for toxic flammable gases and chemicals. He performs reactor changeouts and cleanups and wafer size changes on Epi reactors. [The Beneficiary] supports facility upgrades, and installation of new equipment and upgrades for process development and application programs in semiconductor fabrication and maintenance. He also performs semiconductor fabrication maintenance through use of CVD, PECVD, Preclean, EPI and Diffusion.

With regard to the substantial merit and national importance of the proposed endeavor, the Petitioner asserted that the Beneficiary's proposed work "will continue to create an economic impact." The Petitioner discussed its company operations and noted that its "broad portfolio of innovative technologies and products are used by the most advanced semiconductor fabrication plants around the world." In addition, it contended that the Beneficiary's undertaking has "global implications within the area of Test/Equipment Engineering" and a "direct link to the substantial positive economic effects of [its] continued success as a U.S. company." The Petitioner further indicated that the Beneficiary's proposed "work spans the implementation and testing of new hardware to support equipment for next-generation semiconductor technology nodes."

The record includes information about the Petitioner's business operations and an article entitled "Ensuring U.S. Leadership and Innovation in Semiconductors." This article summarizes a January 2017 report by the President's Council on Economic Advisors on semiconductor innovation, competitiveness, and security. The report identifies "shifts in technology and markets" and "Chinese industrial policies" as two key challenges facing the U.S. semiconductor industry. Additionally, the

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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>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 will consider information about the Beneficiary's 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.

report contains several recommendations to strengthen the U.S. business environment, including “[s]ustaining a world-class workforce through education and immigration policy.” While the record demonstrates that the Beneficiary’s proposed work to perform test and equipment engineering services for the Petitioner has substantial merit, for the reasons discussed below, the evidence is not sufficient to show this endeavor’s national importance.

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 proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of the Beneficiary’s work. The Petitioner contends that the national importance of the Beneficiary’s endeavor is evident from its own global business operations and the company’s innovative technologies relating to semiconductor processing equipment. But the Petitioner has not demonstrated that the economic implications and technological advancements resulting from its operations would be attributable to the Beneficiary’s role as an equipment engineer to an extent that his proposed work holds national importance. The issue here is not the broader implications of the company’s innovations in wafer processing or its cumulative effect on the semiconductor manufacturing industry, but rather the potential prospective impact of the Beneficiary’s specific proposed work as an equipment engineer. Accordingly, without sufficient documentary evidence of their broader impact, the Beneficiary’s testing and equipment engineering services do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, 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. Nor has the Petitioner shown that the Beneficiary’s particular work would have broader implications in the engineering field.

Furthermore, 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. While the appeal brief indicates that the Petitioner’s business operations generated over \$200 million in revenue, the record does not include sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Beneficiary’s future work as an equipment engineer. The record does not show that benefits to the regional or national economy resulting from the Beneficiary’s specific projects or proposed work would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Beneficiary’s proposed endeavor does not meet 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. In visa petition 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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-A-, Inc.*-, ID# 3430329 (AAO June 5, 2019)