



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

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

In Re: 19688561

Date: DEC. 15, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an oil and gas industry 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).

The Director of the Texas Service Center the petition, concluding that the Petitioner 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a 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.

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 sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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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*).

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. Although the Director found substantial merit in the proposed endeavor in the field of oil and gas industry consultation, the Director concluded that the record does not establish that the Petitioner's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as “working in the [o]il and [g]as [i]ndustry, through direct employment, consultancy and well [sic] as research and investigation with several of those entities.” The Petitioner elaborated:

Through my existing contacts and connections, I will secure employment with a local oil industry service firm and help this company in meeting the increasing demands of increased U.S. gas production. I will focus on U.S. [o]il [i]ndustry [r]esearch and [d]evelopment for existing and future challenges, to help increase production. I can provide high level technical consultancy services to [o]il and [g]as companies that desire to grow, develop, improve or expand by using proven as well as innovative processes and methodologies to enable positive results.

In response to the Director's request for evidence (RFE), the Petitioner further specified that “my proposed endeavor is to continue working in field [sic] of [e]lectrical [e]ngineering in the [o]il & [g]as [s]ector, especially concerning [redacted] [t]echnology.” The Petitioner asserted, “[m]y work has direct applications throughout America's energy industries and other high-tech industries.”

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that “[t]he record does not demonstrate that the [P]etitioner's proposed endeavor in this case stands to sufficiently extend beyond an organization [the company/employer] and its clients to impact the industry or field more broadly.”

On appeal, the Petitioner asserts that “letters from individuals holding senior positions throughout his industry describing the importance of [the Petitioner's] expertise in engineering [and] other evidence discussing the immense significance of U.S. advances in this field . . . satisfied the ‘[n]ational [i]mportance’ criterion.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those

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

resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The proposed endeavor of providing consulting services to a company or companies in the oil and gas industry benefits those companies and clients. However, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner’s employer and clients, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. For example, the Petitioner specified that his “employment with a local oil industry service firm [will] *help this company* in meeting the increasing demands of increased U.S. gas production,” without elaborating on how helping that specific employer would have broader implications to rise to the level of national importance (emphasis added). Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361.

The Petitioner’s assertions on appeal that letters of recommendation in the record satisfy the first *Dhanasar* prong are misplaced. The record contains several letters of recommendation, submitted in support of the petition and in response to the Director’s RFE. However, they discuss the Petitioner’s prior accomplishments, which is material to the second *Dhanasar* prong—whether a petitioner is well-positioned to advance a proposed endeavor—not material to the first prong—whether a proposed endeavor has both substantial merit and national importance. *See Dhanasar*, 26 I&N Dec. at 888-91. For example, one letter is from a former manager for [REDACTED] who informs that the Petitioner “put a strong team together” to relocate a facility in or around 2014; however, it does not address the prospective endeavor the Petitioner proposes in the petition. As another example, a letter from a former supervisee of the Petitioner who informs that he was “guided by [the Petitioner’s leadership]” and that the Petitioner “took decisions that got the respect from the customer and our team.” However, like the manager’s letter, the former supervisee’s letter does not address the prospective endeavor the Petitioner proposes in the petition. The other letters of recommendation provide similar accounts of the Petitioner’s prior accomplishments but do not address how the prospective endeavor may rise to the level of national importance.<sup>3</sup>

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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<sup>3</sup> Although we discuss only examples of the letters of recommendation for brevity, we have reviewed the record in its entirety.

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.