



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

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

In Re: 14515184

Date: JUL. 14, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an economist, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that a waiver of that classification's job offer requirement, and thus of a 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. . . . [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. *Dhanasar* states that after EB-2 eligibility has been established, 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.¹

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

¹ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

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.²

II. ANALYSIS

The Petitioner is an economist who has spent most of her career with departments of the [redacted] government, and has also served in faculty positions at three [redacted] universities. She currently serves as President of the [redacted] a think tank in [redacted]. The record includes evidence that she obtained a master's degree in economic science from [redacted] University in [redacted] in 1995, and a Ph.D. in economic science from the same institution in 2006. While the Director did not indicate in his decision whether the Petitioner was eligible for the EB-2 immigrant visa classification, on review we conclude that she qualifies as a member of the professions with an advanced degree. Therefore, the sole issue on appeal is whether she merits a waiver of the classification's job offer requirement under the framework laid out in *Dhanasar*.

The Petitioner stated in her initial filing that her proposed endeavor was to "gain employment as an economist" with a department of the United States federal government or a research institution, and listed several government agencies and private institutions and universities as potential employers. In responding to the Director's request for evidence (RFE), which in part sought further information regarding her specific endeavor, the Petitioner indicated that her experience in [redacted] [redacted] program could be applied to welfare programs in the United States. She also states that as an economist with experience in the [redacted] government and an economic think-tank, she could provide knowledge about and contribute to research of the [redacted] economy that is rare within universities and think-tanks in the United States.³ The Director concluded that the record established that the Petitioner met the first prong of the *Dhanasar* framework. However, after review, we disagree and withdraw that portion of the Director's decision.

In support of the substantial merit of these endeavors, the Petitioner indicated that her endeavor would "relate to research and the furtherance of human knowledge in the field and application of Economics," and submitted articles describing the role of economists in public and private settings. This evidence is sufficient to show that her proposed employment as an economist would be of substantial merit.

As for the national importance of her proposed endeavor, the Petitioner submitted a report from the Center on Budget and Policy Priorities which describes the Supplemental Nutrition Assistance Program (SNAP), administered by the United States Department of Agriculture (USDA), and its benefits to low-income households in the United States. Although this information shows that the

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

³ On appeal, the Petitioner indicates that she could begin her endeavor in the United States by starting her own economic consulting firm, and submits a brief business plan as well as evidence of personal assets. However, where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). We will therefore not consider this new addition to the Petitioner's proposed endeavor.

SNAP program is of national importance, as it “promotes long-term health and well-being” of recipients across the United States, the Petitioner does not specifically describe her work and its potential prospective impact to the field of economics or to SNAP or other welfare programs in the United States. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. Here, the Petitioner refers to her previous work in [redacted] and states that “such models” can be applied to welfare systems in the United States, but she does not describe the model she proposes to apply or how it would have broader implications.

Further, regarding her proposal to “expands [*sic*] on the current understanding and provide better assessment of [redacted] economy” through employment with a university or think tank, the Petitioner did not submit evidence of how this work would be of national importance. She again refers to her previous experience, in this case with the [redacted] but does not specifically describe this aspect of her proposed endeavor or how it would have a broader impact on the field of economics. We note that since the first prong looks to the potential prospective impact of her proposed endeavor, the information about her previous work is less relevant than a detailed description of her intentions for the future. In addition, while she indicated in her response to the Director’s RFE that this aspect of her endeavor “seeks to have a “substantial positive economic effect,”” the record lacks evidence or an explanation of who would benefit from the effects of the Petitioner’s employment as an economist at a university or think tank, or what form those effects would take.

As the Petitioner has not established that her endeavor’s prospective impact supports a finding of national importance, we conclude that she has not met the first prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that she has not established that she 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.