



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

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

In Re: 11853034

Date: JUN. 7, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 while the Petitioner established his eligibility as a member of the professions holding an advanced degree, he 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. . . . [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. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, 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)

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*).

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

As acknowledged by the Director, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ 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.

At the time of filing, the Petitioner was employed as a [redacted] engineer for [redacted] is [redacted] California. Prior to his employment with [redacted] he served as a graduate research assistant for the [redacted] Laboratory at the University of [redacted] College of Engineering (2013-2015). Before coming to the United States, the Petitioner worked in [redacted] [redacted] as an assistant engineer for the [redacted] (2010-2012) and a network planning engineer for [redacted] (2010), and also served as a guest lecturer at [redacted] University in the Fall of 2010, where he taught courses in opto-electronics, electromagnetism, and microprocessor.

The Petitioner indicates that his proposed endeavor is developing new technologies that will benefit the semiconductor and related microelectronics manufacturing industries. The Petitioner claims to be an expert in [redacted],” and proposes to continue “his research in the same field in which he has been a leader and innovator for over five years, specifically within the area of [redacted].” The Petitioner states that his employer [redacted], is the market leader in [redacted] tool manufacturing, and that he is a member of [redacted]’s core technology development team, which is tasked with developing the company’s flagship product, the [redacted] tool.⁴ The Petitioner submitted copies of two patent applications filed on behalf of [redacted] identifying him as one of the inventors on each application, and states that his “short-term goal is to continue developing IPs [intellectual properties] and trade secrets for [redacted].”

The Director determined that the Petitioner’s proposed endeavor has substantial merit, and we agree with that determination. The record includes information about the semiconductor industry, indicating the industry ranks “at the top of all U.S. exporting industries in recent years,” and that continued developments in the field have created technological innovation and led to new products, economic growth, productivity growth, and new industries. The Petitioner also discussed his company’s operations and noted that it is developing leading-edge technologies, and is “contributing to the US economy by generating valuable IPs and trade secrets, which help to bring billions of dollars from different countries including but not limited to China and Taiwan.” While the record demonstrates

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

³ The record indicates that the Petitioner earned a bachelor of science in electrical and electronic engineering from [redacted] University of Engineering and Technology in 2009, as well as master of science degree in electrical and computer engineering and a Ph.D. in electrical engineering from the University of [redacted] in 2014 and 2017, respectively.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about this prospective position to illustrate the capacity in which he intends to work.

that the Petitioner's proposed work to develop new technologies for [] 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.

Therefore, to evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. The Petitioner contends that the national importance of his endeavor is evident from his employer's business operations and the company's innovative technologies, specifically the company's flagship product, the [] tool. But the Petitioner has not demonstrated that the economic implications and technological advancements resulting from []'s operations would be attributable to his role as a [] 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 [] [] or its cumulative effect on the semiconductor manufacturing industry, but rather the potential prospective impact of the Petitioner's specific proposed work as a [] engineer. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's work in the area of [] and his development of proprietary tools for [] does 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 his particular work would have broader implications in the semiconductor industry or the engineering field.

Furthermore, the Petitioner has not demonstrated that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner submitted a news article indicating that [] is establishing a research and development facility in [] Michigan, that will create approximately 500 jobs and result in a regional investment that exceeds \$70 million. The appeal brief, however, indicates that [] is the world's leading supplier of process control and yield management solutions for the semiconductor and related industries with approximately 10,000 employees. While the creation of 500 new jobs as a result of []'s expansion of its operations into Michigan is noteworthy, the record does not include sufficient information or evidence demonstrating that the projected U.S. economic impact or job creation is attributable to the Petitioner's present or future work as a [] engineer in its [] California office.

The record includes a letter from [] Head of [] who claims that the Petitioner is "actively contributing to the latest technology development in [] [] detection," and further claims that "without our tools, it is nearly impossible for chip

manufacturers to fabricate a functioning integrated circuit.” [redacted] asserts that the technologies developed by [redacted] thus have national interest due to their critical nature. The Petitioner also submitted a letter from [redacted] Senior Scientist with [redacted]’s [redacted] Design Group, who states that the Petitioner has made four invention disclosures during the course of his employment, two of which are represented by the patent applications noted above, and the remaining two with patent applications in the process of being filed. He states that the Petitioner’s inventions “have directly contributed to our latest generation of [redacted] design,” and that his work on semiconductor [redacted] “is the cornerstone of our current technology program named [redacted]

Additionally, the Petitioner claims that his proposed endeavor for [redacted] has implications of national security, noting that in 2017, the President’s Council of Advisors on Science and Technology proposed to continue semiconductor innovation to mitigate the threat posed by Chinese industrial policy and to strengthen the U.S. economy. In support of this assertion, the Petitioner submitted Internet articles from *The Edge Markets* and *Financial Times* discussing the issue. We note that while each article notes that [redacted] is an industry leader in [redacted] production, it also bestows the same accolades on other competitor companies based in the U.S. and abroad. For example, the article in *Financial Times* indicates that other companies, such as U.S.-based [redacted] and [redacted], and Japan’s [redacted] dominate the market for equipment that can deposit [redacted] transistors and other [redacted] components on to a single chip.”

The Petitioner has not established that his proposed work for [redacted] has implications beyond his employer and its customers at a level sufficient to establish the national importance of his endeavor. While [redacted] indicates that the Petitioner’s work “has implications in national security and intellectual property protection,” the record does not show that the specific work he proposes to undertake offers original innovations that advance the semiconductor industry, or otherwise has broader implications in the field of engineering in general.⁵ Moreover, the record does not corroborate the assertion of [redacted] who claims that the Petitioner’s work “has contributed to the overall technology advancement in the American semiconductor industry,” given his claim that the Petitioner’s work has also “helped [redacted] to maintain its lead in semiconductor [redacted].”⁶ As the Petitioner has not established that his specific endeavor’s prospective impact supports a finding of national importance, he has not met 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.

⁵ Although the record includes two patent applications attributed to the Petitioner’s inventions, he is not the sole inventor noted on each application. For instance, he is one of two inventors, and one of six inventors, respectively.

⁶ 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. While the letters from [redacted] and [redacted] emphasize [redacted]’s position as “[redacted]” the record does not demonstrate that an impact on this single company and its projects necessarily equates to a broader impact on the industry, or otherwise has broader implications in the semiconductor industry.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he 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.