



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

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

In Re: 10895295

Date: SEP. 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, a mechanical engineering researcher, 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 denied 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).¹ *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)

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

The Director found that the Petitioner 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 of a labor certification, would be in the national interest. Specifically, the Director concluded that the proposed endeavor has substantial merit and is of national importance; however, the Director also concluded that the record did not satisfy the second and third prongs of the *Dhanasar* framework.

We disagree that the record establishes that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Accordingly, we withdraw the Director's finding that the evidence establishes that the proposed endeavor has national importance as contemplated by *Dhanasar*.

The Petitioner initially described the proposed endeavor as follows: “[c]onducting experiments and analyzing data from [redacted] devices in order to find fundamental laws behind [redacted] behavior. Disseminating results to field.” At the time of filing the petition, the Petitioner worked as a postdoctoral fellow at [redacted]. He elaborated that his future research plans would involve the following:

Extend[ing] my research on both [redacted] systems and [redacted] surfaces. I would like to examine the empirical outcome of the implementation of my techniques in increasing the efficiency of an actual [redacted]. Moreover, I plan to study the interaction of water with my newly-designed [redacted] surface in new ways.

The Petitioner stated that his research “will reveal the unpredicted [*sic*] and inevitable challenges of implementing [described] techniques, and thus, will increase our knowledge in [redacted] field and help us to design a system that achieves optimal levels of efficiency.” He also stated that his research “will provide more information on the economic feasibility of building such a [redacted] system for our buildings for [redacted] during the day and consuming it at night – a path to lowering the consumption of [redacted].” The Petitioner further stated that his research will “increase[] our knowledge about utilizing [redacted] surfaces to prevent [redacted] and enable[] us to design an optimized [redacted] surface. The [redacted] industry, which suffers from [redacted] on the [redacted] benefits from this project.” Additionally, the Petitioner stated that his research “will shows [*sic*] us the effectiveness of [redacted] surfaces in [redacted] application . . . and will facilitate further research on implementing it in [redacted] industry to achieve faster vessels.”

In response to the Director's request for evidence (RFE), the Petitioner submitted a letter from the chair of the [redacted] University in [redacted] Department of Mechanical Engineering and Materials Science. The letter asserts that, in October 2019, prior to the Director's decision, the

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

Petitioner “was offered and accepted a position as a [p]ostdoctoral [r]esearch [a]ssociate . . . in the Department of Mechanical Engineering & Materials Science at [redacted] in [redacted]. As a postdoctoral research associate, the Petitioner would:

work[] primarily on the ‘[p]assive and compact [redacted] project (supported by NASA), and his responsibilities include, but are not limited to, design, setup, and conduction of experiments, experimental analysis, writing reports, mentoring of students, and assisting with general lab tasks (e.g., lab safety audits, etc.). Time permitting, he might also work on other projects which are currently being undertaken in [his supervisor’s] research lab.

In response to the RFE, the Petitioner described the change in employment—and in his research focus—as “a new opportunity to continue my journey as a postdoc.” He stated that the new research focus “was not only perfectly aligned with my background in [redacted] dynamics, but it was also funded by NASA, showing its substantial merits to the field.”

A petitioner must establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The information provided by the Petitioner in the response to the Director’s RFE did not clarify or provide more specificity to the proposed endeavor as initially described, but rather presented new elements to the endeavor in general, and a specific research focus dissimilar to the originally stated focus. The initial description of the proposed endeavor indicated the Petitioner would “[e]xtend my research” and “study the interaction of [redacted] with my newly-designed [redacted] surface in new ways” (emphasis added). Moreover, unlike the initial proposed endeavor’s focus “on both [redacted] systems and [redacted] surfaces,” with possible applications for the [redacted] industries, the new position’s research focus would be “to develop a prototype with unprecedented [redacted] capabilities, which would serve as enabling technology for new [redacted] missions.” The RFE response does not describe how the new research focus would relate to “study[ing] the interaction of [redacted] with [the Petitioner’s] newly-designed [redacted] surface in new ways,” “lowering the consumption of [redacted]” “benefit[ing] . . . [t]he [redacted] industry,” or aiding the [redacted] industry to achieve faster vessels,” which the Petitioner initially stated his endeavor would accomplish. The record does not establish how “technology for new [redacted] missions” may correspond to [redacted] consumption or the [redacted] industries.

Additionally, although the RFE response indicated that the Petitioner “might also work on other projects which are currently being undertaken in [the supervisor’s] research lab,” it does not specifically state that the Petitioner would pursue the various research projects he initially described,

nor does it elaborate on whether there would be “[t]ime permitting” to do so. Accordingly, the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248; *see also Dhanasar*, 26 I&N Dec. at 889-90.

Additionally, the record does not establish how the proposed endeavor, as initially described, has national importance, as contemplated by *Dhanasar*.³ In determining national importance, the relevant question is not the importance of the industry, field, 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. *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 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.

We note that *Dhanasar* addresses “endeavors related to research, pure science, and the furtherance of human knowledge” under the first prong; however, the context of that discussion relates to the ways in which a proposed endeavor’s “merit may be demonstrated,” not to state that endeavors related to research categorically have national importance. *Id.* at 889.

The Petitioner asserted the proposed endeavor would “extend” his research, “increasing the efficiency of an actual [redacted], . . .] study the interaction of [redacted] with my newly-designed [redacted] surface in new ways,” “increase our knowledge in [redacted] field and help us to design a system that achieves optimal levels of efficiency,” “enable[] us to design an optimized [redacted] surface,” and “facilitate further research on implementing [materials] in [redacted] industry to achieve faster vessels.” However, he does not elaborate how the proposed endeavor would result in “national or even global implications within a particular field.” *Id.* at 889.

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.⁴ We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

³ Because the new set of facts presented in the RFE may not establish that, at the time of filing, the proposed endeavor was eligible for a national interest waiver, we need not address whether the new set of facts demonstrate national importance. *See* 8 C.F.R. § 103.2(b)(1), (8); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978); *Dhanasar*, 26 I&N Dec. at 889-90.

⁴ Because we conclude that the record does not satisfy the first *Dhanasar* prong, which is dispositive, we need not address the Petitioner’s further assertions on appeal regarding the second and third prongs, or the other issues addressed in the brief.

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.