



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

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

In Re: 16664603

Date: SEP. 20, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a process engineer, 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 initial petition and dismissed a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal. The matter is now before us on a combined motion to reconsider and motion to reopen. On motion, the Petitioner submits additional documentation and asserts that he is eligible for a national interest waiver.

Upon *de novo* review, we will dismiss the motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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 (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 matter of discretion², 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.³

II. ANALYSIS

At the time of filing, the Petitioner was working as an engineering supervisor at [redacted] in [redacted] Texas. With respect to his proposed endeavor, the Petitioner indicated that he intends to continue his process engineering and project management work “in construction and operation of processing facilities in the [redacted] industries.” He asserted that he plans “to support the establishment of new facilities” in the [redacted] [redacted] industries. In addition, the Petitioner noted on appeal that he was “employed in a full-time position with [redacted]”⁴ as a process engineering specialist with a dual role as project manager. [redacted] has specifically hired me to strengthen the technical

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*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner noted that [redacted] changed its name to [redacted]

capabilities in their [redacted] Office with regard to [redacted] projects.”⁵

In our prior decision, we concluded that the Petitioner’s proposed process engineering and project management work did not meet the “national importance” element of *Dhanasar*’s first prong. We determined that the evidence was insufficient to show that his work would impact the process engineering field, his industry, or the environment more broadly, as opposed to being limited to his employer and its clientele.⁶ Additionally, we determined the evidence was insufficient to show that the economic implications of the facilities to which the Petitioner provided project management services would be attributable to the Petitioner’s projects to an extent that his proposed work holds national importance or that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

A. Motion to Reconsider

On motion, the Petitioner requests we reconsider our previous decision because he “has met every element of the precedent caselaw, establishing that a waiver of the job offer requirement and labor certification is in the national interest.” We exercise *de novo* review of all issues of fact, law, policy, and discretion. See *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

Here, the Petitioner argues the evidence in the record at the time of decision is sufficient to satisfy the requirements in *Dhanasar*. We disagree. Our previous decision cited *Dhanasar* and conducted an analysis of the relevant evidence in the record at the time of the decision finding that the Petitioner did not satisfy the requirements to qualify under *Dhanasar*’s first prong. While the Petitioner reiterates the evidence in the record as well as his arguments on appeal, he does not specifically indicate how our decision was based on an incorrect application of law or policy or that the decision was incorrect based on the evidence in the record of proceedings at the time of decision. We will therefore dismiss his motion to reconsider the matter.

B. Motion to Reopen

On motion, the Petitioner submits additional evidence including a new statement discussing his most recent [redacted] project that is “centered on meeting the Euro [redacted] specifications and meeting Global expectations for reduction of Green House gas emissions.” The Petitioner argues that this project will make [redacted] to meet the needs

⁵ 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 position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁶ 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.

of the country.” He also states that [redacted] has recommended the use of a [redacted] extraction process” that is licensed by [redacted], a US based company and also recommended a “second new technology for treatment of [redacted] stocks for the production of Euro [redacted] [redacted] which “is licensed by an American-based company – [redacted] and “has limited applications in the US market.” The Petitioner argues getting these newer technologies installed in [redacted] “will help with gaining acceptance of the technologies in the US” and “will improve the ability of [redacted] [redacted] and [redacted] to sell additional licenses in the US and worldwide market.” In support of his statement, the Petitioner submits a [redacted] scope of work document for [redacted] in [redacted]. The document indicates [redacted] will “identify alternatives, prioritize them and define the best configuration in the [redacted] to produce [redacted] and to adjust other technical specifications...” However, the scope of work document indicates that “Wood will prepare a licensor selection matrix for equitable grading of the licensors selected” but does not list any specific technologies and does not indicate the Petitioner would have decision-making authority over the selection of technologies. This document does not support the Petitioner’s assertion that he has recommended new technologies licensed by US based companies or that these technologies will be licensed to such an extent that it would impact the process engineering field, his industry, or the environment more broadly, or that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

In addition, the Petitioner submits a proposal from [redacted] for [redacted] Production Facility to illustrate the impact of his work all across the United States. The proposal indicates [redacted] [redacted] would provide “management support and monitor [redacted] Contractor activities throughout completion of detailed engineering.” The proposal from [redacted] indicates “[o]ur complete range of services can be executed using a larger team of [redacted] people with minimal Owner personnel, or with a core team of key individuals working in an integrated team with [redacted].” The proposal includes resumes from personnel already employed by [redacted] that would be available for staffing this project but does not indicate the project would have the potential to hire U.S. workers to such an extent as to be of national importance. Additionally, this proposal does not support the Petitioner’s assertion that his work would impact the process engineering field, his industry, or the environment more broadly, as opposed to being limited to his employer and its clientele.

The Petitioner also submits a [redacted] proposal to [redacted] for [redacted] to [redacted] dated March 2018, and a [redacted] Project Management Plan prepared by and approved by the Petitioner. These documents indicate [redacted] requested [redacted] to perform Basic Design services for a [redacted] plant to be built in an existing [redacted] plant located in [redacted] China. [redacted] plans to capitalize on the success of their [redacted] process, and prove its technology with an upstream [redacted] unit before building multiple trains.” While these documents indicate the Petitioner led the project management portion of this project, the evidence does not indicate that any of the Petitioner’s work would impact the process engineering field, his industry, or the environment more broadly, as opposed to being limited to his employer and its clientele or how this work would be nationally important to the United States.

Finally, the Petitioner submits an article detailing a manufacturing boom in the United States that is expected to grow, in part, due to cheap and plentiful [redacted]. This article indicates there is an expectation for a wave of [redacted] plant openings in 2017 and 2018. The article mentions [redacted]

[redacted] announced a [redacted] spending program “to expand its manufacturing capacity along the [redacted] and a wave of new [redacted] plant openings “could generate 70,000 to 80,000 direct jobs.” The article does not mention any projects being worked on or influenced by the Petitioner and does not otherwise indicate the Petitioner’s proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

While the Petitioner contends that his proposed endeavor involves proposing new technologies and opening new facilities both inside and outside the U.S., this information does not establish that his work with [redacted] offers broader implications for the process engineering and project management field or oil and gas industry more broadly rather than mainly affecting his employer and its own clientele. As the Petitioner has not presented new facts or evidence to establish the national importance of his proposed endeavor, he has not met *Dhanasar*’s first prong.

III. CONCLUSION

The documentation provided in support of the combined motion to reconsider and reopen does not overcome the grounds underlying our previous decision. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.