



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

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

In Re: 23114323

Date: DEC. 22, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, a drilling 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 petition, concluding that the record established 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. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.²

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, the Director concluded that the record did 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.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

Initially, the Petitioner described his experience and background in the fields of mechanical engineering and drilling and wells engineering, and indicated that he was seeking employment in these fields. A supporting letter described the Petitioner’s proposed endeavor as follows:

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

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

[The Petitioner] will be able to significantly contribute to the U.S. economy because the United States economy runs on oil and gas. The Petitioner's drilling engineering experience will enable the oil and gas industry to expand and grow as he develops and exploits these resources. The U.S., and especially the state of Texas is developing energy from shale in an advanced process that uses the latest drilling technologies and equipment. Playing a big role in this is hydraulic fracturing and horizontal drilling which is safely unlocking vast U.S. reserves of oil and natural gas found in shale and other tight-rock formations, and drilling engineering is a specific and highly necessary skill which is essential for the continued exploration and exploitation of these resources. [The Petitioner] will be able to continue to use his talents to find and develop oil and gas (and other) natural resources which can be exploited. The necessity of finding and developing these resources is critical to keeping the U.S. economy running.

The Petitioner claimed that his work has both substantial merit and national importance because the fields of mechanical engineering and drilling and wells engineering have substantial intrinsic merit based on their "role in generating advances with direct applications throughout our country's economy." The Petitioner also claimed that the continued dissemination of his published works in the field will "impact all parts of the nation."

The Director issued a request for evidence, noting that continuing employment in one's position, field, or industry is not an endeavor sufficient to evaluate under the *Dhanasar* analytical framework. The Director asked the Petitioner to specify the exact nature of the proposed endeavor, and requested evidence to demonstrate the endeavor's substantial merit and national importance.

In response, the Petitioner indicated in a statement of intent that his proposed endeavor is "to continue [his] career working in the field of Drilling and Wells Engineering, which has direct applications throughout our country's oil and gas industry." He further stated:

As I noted in my NIW case, my goal is to continue generating technological advances in [redacted] and [redacted] especially concerning data acquisition and optimization. I also intend to work on improving the performance of mature reservoirs by optimizing [redacted] and [redacted] [redacted] My main focus is [redacted] [redacted] [redacted] as well as [redacted] all of which are of increasing importance to the U.S. energy sector.

I intend to continue serving the United States and its energy sector as a Drilling & Wells Engineer for the remainder of my professional career.

The Petitioner also submitted letters of recommendation in support of his petition, and asserted that these and other opinion letters previously submitted demonstrated the substantial merit and national importance of his proposed endeavor and his overall qualifications for a national interest waiver.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the record did not establish the endeavor's national importance, as the evidence did not demonstrate the endeavor's potential prospective impact or show the wider economic effects of

the endeavor. The Director noted that the overall importance of the Petitioner's occupation does not establish the national importance of the Petitioner's particular proposed endeavor, and further noted that the Petitioner did not submit sufficient evidence to show the potential economic impact of the endeavor on the U.S. economy or establish that the proposed endeavor had significant potential to create jobs or generate technological advancements. On appeal, the Petitioner asserts that the decision to deny the petition was in error and that he is eligible for a national interest waiver.

Upon review, we concur with the Director's determination that the Petitioner did not demonstrate the national importance of his endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. The Petitioner claimed that he will continue his career working in the field of drilling and wells engineering. Although the Petitioner highlighted that his endeavor would positively impact the economy, he has not offered sufficient evidence to corroborate these claims. We acknowledge that by continuing to work as a drilling and wells engineer, the companies that hire him for his services can be more productive in providing services to others and that the benefits of a productive, well-functioning business extend beyond the individual organization. We further acknowledge the Petitioner's assertion that his work in this field will ultimately assist the U.S. oil and gas industry in achieving energy independence. However, the record lacks sufficient evidence to establish a strong connection between the proposed endeavor activities and job creation or tax revenues on a level commensurate with national importance. 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. *Dhanasar*, 26 I&N Dec at 893. Similarly, the proposed endeavor may very well positively impact the individuals and businesses that engage the Petitioner for his services, but the evidence does not suggest that the Petitioner's services will be available on a level that creates national or global implications in the field of drilling and wells engineering or the oil and gas sector. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner argues that we did not properly analyze his case in comparison to the standard set by *Dhanasar*. The Petitioner asserts that we are legally required to compare the impact of his work with that of Dr. Dhanasar and cites to the concept of precedent decisions in support of this assertion. While we agree that *Dhanasar* is a precedent decision and further acknowledge the concept of precedent decisions and their controlling nature, we reiterate our previous observation that the Petitioner cited no legal authority for a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors. *Dhanasar* establishes an analytical framework to examine national interest waiver cases, but it does not mandate, or even suggest, that a side-by-side comparison of individual petitioners and endeavors is required. Here, the Petitioner misunderstands the nature of precedent decisions when he asserts that approvals are required for any petitioner with more impact than Dr. Dhanasar.

The Petitioner also states on appeal that his field of endeavor falls within the STEM fields of science, technology, engineering, or mathematics. Citing to the USCIS Policy Manual, the Petitioner argues

that his endeavor in the field of engineering is important as it relates to research and development-intensive industries. With regard to national importance, however, 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 id.* at 889. As noted by the Director, the Petitioner must demonstrate the national importance of his continued career as a drilling and wells engineer in the oil and gas industry, rather than the national importance of the industry overall.

Moreover, the fact that his endeavor falls within a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have both substantial merit and national importance in respect to the first prong of *Dhanasar*. *See generally* 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policymanual>. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.*

We also acknowledge the Petitioner’s letters of recommendation, which evaluate the Petitioner’s achievement in the industry and comment on his proposed endeavor.³ [redacted] a senior petroleum engineer for [redacted] states that the Petitioner’s endeavor “will enhance and sustain the societal platforms we have come to enjoy,” noting that “until solar, wind, and biofuels can substantially supply the United States’ energy demand . . . oil is king, and it drives the US economy to the tune of a reported 10+ million jobs.” While we note that the United States is reliant on the oil industry, [redacted] does not articulate how the Petitioner’s specific endeavor will impact or make advances to the industry as a whole. In *Dhanasar*, we 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.” *Dhanasar*, 26 I&N Dec. at 889. Here, [redacted] does not explain what specific benefits the Petitioner’s proposed endeavor will add, nor does he explain what “advances” the Petitioner’s proposed endeavor will make in the industry.

[redacted] further noted that the United States has seen an annual decline in the number of graduate petroleum engineers which therefore mandates a need for foreign talent to fill this need in the workforce. We acknowledge the importance of addressing the nation’s shortage of petroleum engineers; however, neither [redacted] nor the Petitioner sufficiently explain how the Petitioner’s work as a drilling and wells engineer would resolve the shortage or produce an impact rising to the level of national importance.

The Petitioner also submitted a letter from [redacted] an associate professor at [redacted] University, who states that the Petitioner’s endeavor will involve providing his technical knowledge and skills to U.S. oil and gas companies. [redacted] concludes that the endeavor “has significant potential to employ U.S. workers and has other substantial positive economic impacts,” but does not explain the basis for this conclusion or identify the positive economic impacts of which he opines. He

³ While we discuss a sampling of letters, we have reviewed and considered each one.

also states that the endeavor will “broadly enhance societal welfare, or cultural enrichment,” but does not explain how he has reached this determination. Although he comments generally on the industry as a whole, his letter does not explain how the Petitioner’s specific endeavor will impact or benefit the industry. Therefore, we agree with the Director’s determination that the letters do not offer support for the conclusion that that the proposed endeavor has national importance.

As discussed above, it is not apparent that the Petitioner’s proposed endeavor activities would operate on such a scale as to rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

For these reasons, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding his eligibility under the second and third prongs. *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).

III. CONCLUSION

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

ORDER: The appeal is dismissed.