



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

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

In Re: 20161608

Date: FEB. 3, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an architect and professor, 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 he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, 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)

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<sup>1</sup> 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).

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.<sup>2</sup>

## II. ANALYSIS

The Director found that 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 a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that he intended to continue his career "in the field of Architecture by applying my skills in designing, planning, and developing complex architectural and engineering projects." He asserted that he planned "to continue designing, maintaining good working relationships, and identifying any opportunities for development in the Architecture industry. My goal is to continue my work coordinating all architecture projects, . . . lead[ing] companies in developing new architecture projects, ultimately benefiting the United States economy."

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor in the United States. He was informed that he should submit a "detailed description of the proposed endeavor and why it is of national importance." The Petitioner was also asked to present documentary evidence that establishes his proposed endeavor's national importance.

In response to the Director's RFE, the Petitioner stated: "I intend to continue using my demonstrated expertise and knowledge in Architecture and Civil Engineering, focusing on teaching in technical and advanced schools of architecture, including the drawing techniques and construction design with the BIM methodology – Building Information Modeling theme." He indicated that his proposed endeavor involves "new buildings under construction, remodeling, or revision of structure for different uses, to include: services, institutional or industrial; strategic planning to implement the construction and renovation of buildings (developing a layout in the stages of constructive and budgetary feasibility); development of products, construction materials, standardization of the use and application of materials; and standard of execution of specific details of the construction work." Furthermore, the Petitioner asserted that he planned "to start teaching in technical and advanced schools of architecture drawing techniques and construction design with the BIM methodology. Also, in the technical exercise in civil construction design, I will invite professionals from the construction area to work together."

In addition, the Petitioner explained that his undertaking is aimed at "studying new buildings under construction, which will lead to increased access to affordable housing, quality management and construction projects, remodeling or revision of structure, and improved infrastructure development, which can facilitate commercial activities as well as social activities throughout the United States." He contends that "[b]y creating new products, images, and layout of agencies, increasing the perception of

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

brand value, I can enhance operational efficiency and quality, allowing me to impart my services of Architecture and other engineering services locally and globally.”

The record includes information about the architecture profession, construction industry output, the architectural industry outlook, the real estate investment industry, U.S. home values, the expansion of the U.S. housing market, features that differentiate the U.S. from other industrial economies, the effects of domestic investment by international companies on our country’s economy, Brazilian investment in the South Florida real estate market, the impact of affordable housing on New York State’s economy, and the cost to the U.S. economy associated with the urban housing shortage. In addition, the Petitioner provided articles discussing earnings opportunities in architecture, the benefits of affordable housing, economic impacts of commercial real estate, housing’s contribution to U.S. gross domestic product (GDP), the U.S. commercial real estate outlook, the value of foreign direct investment (FDI) to our country’s economy, FDI in Florida, increased investment in the U.S. housing market, the U.S. affordable housing shortage, rising housing costs’ impact on economic mobility, and our nation’s inadequate supply of affordable homes for low-income families. He also submitted information about projected growth in the construction industry, the U.S. need for senior living and healthcare architecture, affordable housing’s benefit to families and local economies, real estate as a source of wealth, housing’s connection to economic growth, conditions in the U.S. housing market, foreign investment in U.S. real estate, foreign investors’ demand for U.S. commercial real estate, the national shortage of low-income rental housing, and our nation’s housing affordability crisis. The record therefore supports the Director’s determination that the Petitioner’s proposed work as an architect and teacher has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner’s evidence did not show that his proposed work stands to have broader implications for the field. In addition, the Director indicated that the Petitioner had not demonstrated that his undertaking “has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.”

In his appeal brief, the Petitioner argues that he “has over 30 years of experience as an Architect and Professor of Architecture in Brazil. He has strong technical knowledge and expertise in tools and methods that can readily contribute to the socioeconomic needs in the U.S.” The Petitioner’s skills and knowledge in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

Furthermore, the Petitioner asserts that his proposed endeavor stands to “substantially enhance the U.S. business, real estate, and construction industries, as well as the national economy.” He claims that his undertaking will “benefit the U.S. economy, generate more revenue, increase the flux of foreign direct investments (FDI), and contribute to the generation of jobs in the country.” The Petitioner also contends that his proposed work “will produce significant national benefits, due to the ripple effects of his professional activities.” In addition, he states that his endeavor serves the national economy by “[s]purring economic initiatives on behalf of the United States” and “[p]rioritizing the domestic job market.”

In determining national importance, the relevant question is not the importance of the field, 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.

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. While the Petitioner’s statements reflect his intention to provide valuable architectural and teaching services for his industry, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of 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. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his architectural and teaching projects to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. 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 architectural and teaching projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet 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.

### 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.