



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

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

In Re: 19697820

Date: JAN. 11, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an “admission and marketing director” and a “marketing scholar specialist,” 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 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 additional evidence and 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 discretion¹, 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

¹ 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).

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) 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 determined 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 education "admissions and marketing process." He stated that his proposed endeavor was "focused on getting more and more nationals or American residents to achieve their professional and personal goals, thus achieving that the United States obtain professionals prepared in different areas of the education, economy, culture and business."

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:

As Director of Admissions and Marketing my effort is not only to comply with the requirements established by the Department of Education or by the Government, my effort is directed to the benefit of the student (professional and personal objectives), that of the education institution (social objectives and economics) in which I am working, society and therefore the country in general generating skilled labor, sustained growth of the economy and generating new professionals with potential in culture, art and business.

The Petitioner further indicated that he is currently employed by [redacted] University and that his work involves restructuring "the admission process for the purpose of a tripartite benefit (individual-society-country)." He explained that his process includes creating concepts for his institution that encourage prospective students to engage in "some type of study that will improve their future." In addition, the Petitioner asserted that his proposed work is aimed at making students "understand that in order to have a better future, academic preparation is important. I am continually looking to create or be in those spaces between the community and my admissions department that generate that feeling of improvement in the person." The Petitioner also noted that his undertaking involves interviewing student prospects and ensuring that enrollment meets their needs. Furthermore, he stated that his work entails

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

restructuring the admissions process to benefit prospective students in accordance with “the characteristics of the educational institution.” Finally, the Petitioner indicated that his proposed endeavor includes ensuring that students complete their academic requirements, creating admission forms, and serving as a reference for students.

The record includes a July 2020 letter from the president of [redacted] University stating that the Petitioner has been employed by the university as “an Admission and Marketing Director” since January 2020.³ This letter indicates that his responsibilities include establishing “the student recruitment team as a center of expertise”; leading “the university’s advancement and recruitment teams”; holding “monthly department meetings”; advising “students on issues such as course selection, progress towards graduation, and career decisions”; participating “in faculty and college committee activities”; and providing “appropriate management information relating to [committee] effectiveness and report on their results.” The Petitioner is also responsible for engaging “networking opportunities to market all aspects of admission and enrollment program,” “actively support[ing] the university leadership,” formulating “strategic plans for the admission department,” assessing and collecting “tuition and fees,” representing the “institution at community and campus events,” and managing and monitoring the “admission department.”

Furthermore, the Petitioner submitted letters of support from graduates of universities where he has worked.⁴ For example, [redacted] asserted that the Petitioner “developed an event for the community that was every Saturday and which I attended and where he invited different quality speakers and that within the event he generated a strategy where the participants could understand how important it was to strive and have a title from the United States to have a better future.” In addition, [redacted] stated that the Petitioner participated in a “conference where he in a specific way explained in detail . . . the benefits that we had from carrying out an academic program that allowed me to have personal and professional growth. Immediately I gave him my information and set an appointment with him to know more precisely what he could do and at that time he helped me with the entire process of admission for the university.” Similarly, [redacted] indicated that that he met the Petitioner “at the [student] fair and from Colombia through phone calls and by email I began the process of admissions. I accompany myself at all times to become an international student, when I began my study program he was always there to support me in any situation that presented itself.”

Additionally, [redacted] stated that the Petitioner contacted him and they “began an admission process that lasted approximately 6 months. I remember that the first steps was [*sic*] to carry out all that were formats and interview to be accepted at the university. At all times he was the support in all aspects of the process so that . . . I could decide for the Master in Business Administration” (MBA). Likewise, [redacted] indicated that the Petitioner invited him to the campus at [redacted] University for an explanation of the admissions process. [redacted] also noted that he graduated from the MBA program, started his professional life, dedicated himself to his work, helped his “wife study a special children’s program,” bought a house, and has “a

³ 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 his current 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.

⁴ While we discuss a sampling of these letters, we have reviewed and considered each one.

comfortable life.” Further, [redacted] asserted that the Petitioner explained to him what the process was like for pursuing a master’s degree. [redacted] also mentioned that the most important part of their conversation was “the way in which [the Petitioner] showed me how I could make my equivalence of my professional title and where could I get professionally with doing my master in Information Technology.”

The aforementioned letters of support discuss the Petitioner’s previous work recruiting students and his effectiveness as an admissions director, but they do not address the national importance of his proposed endeavor. The Petitioner’s knowledge, skills, and experience 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.

The record also includes articles discussing the recent decrease in international student enrollment at U.S. universities, the recent decline in international student economic value to the United States, and the drop in foreign enrollment at U.S. colleges due to the COVID-19 pandemic. Additionally, the Petitioner presents a list of 186 students he claims to have enrolled at the universities where he has worked. The record therefore supports the Director’s determination that the Petitioner’s proposed work as an admission and marketing director 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 will have positive economic effects for the United States” at a level indicative of national importance.

In his appeal brief, the Petitioner asserts that his proposed “work in the United States as a Marketing Scholar Specialist” is aimed at “procuring the enrollment of a major number of international students as possible for the benefit of the United States institutions of higher learning economy.” He contends that revenues from institutions of higher learning play “a fundamental role in the economy of the United States” and that “international students contributed \$45 billion to the U.S. economy in 2018.” The Petitioner also argues that decreased foreign student enrollment at U.S. colleges and universities attributable to the COVID-19 pandemic “could spell trouble for the financial health of the nation’s higher education institutions” and places “thousands of American jobs” at risk. Additionally, he points to U.S. travel restrictions and declining international student enrollment and claims that his undertaking involves “enrolling foreign students into the national education system for the benefit of the United States higher institutions’ economy.” The Petitioner concludes that his proposed endeavor has national importance because it “will help maintain an important sector of the American economy” and preserves “a lot of job position[s] currently jeopardized by the present pandemic.”

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 student admission and marketing services for his university, 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 university and its future students 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 admissions and marketing 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.