



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

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

In Re: 19785375

Date: MAR. 10, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a marine 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 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).<sup>1</sup> *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)

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<sup>1</sup> 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*).

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 the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found that the proposed endeavor has substantial merit, the Director concluded that the record does 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.

Initially, the Petitioner described the endeavor as a "plan . . . to continue working as a [m]arine [e]ngineer, with multi-national companies in the U.S. I intend to continue using my unique expertise and extensive knowledge in the field of engineering, where I can provide expert technical advice to U.S. companies." The Petitioner added, "I will bring optimal results to any engineering, construction, or marine company that chooses to hire me in the future." The Petitioner further asserted that his endeavor would entail the following:

- Working on large and highly marine mechanical engineering projects in the construction industry while maintaining quality and safety standards;
- Improve validation testing practices and recommend component modifications to reduce costs;
- Advance the proposed endeavor of applying my expertise and skills in the field of marine engineering to seize market and investment opportunities for U.S. companies in lucrative markets;
- Develop new and improved designs for vehicle structural components, engines, transmissions, or other marine systems, contained in vessels sold in the U.S.;
- Guide newer generations of marine engineers; and
- Generate tax revenue.

In response to the Director's request for evidence (RFE), the Petitioner rephrased his description of the proposed endeavor as follows:

I intend to continue using my expertise and knowledge to work in the field of [n]aval and [m]arine [e]ngineering in the United States by helping [redacted] to establish and grow in USA . . . . My proposed effort will contribute to the development of new technologies associated with naval structures projects for prospecting in deeper waters in the United States. This will, in turn, increase business revenues, and boost the flow of money throughout the United States, contributing to U.S. gross domestic product (GDP).

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

The Petitioner also asserted in response to the RFE:

I will use all my experience to meet the following interests of :

- Establish company goals and objectives, both short-term and long-term.
- Develop business plans and strategies.
- Advise the board of directors on strategic issues.
- Present reports on the company's business and performance to the board.
- Motivate and provide leadership to [m]anagers and senior executives.
- Build relationships with external experts and agencies through seminars, conferences and professional networking.
- Ensure that the company continues to make profits and grow investors' wealth.

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that “the evidence is insufficient to show that [the] proposed endeavor will impact the field of [m]arine [e]ngineering more broadly as opposed to primarily impacting an employer, single clients, or projects.” The Director also concluded that “the [P]etitioner 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.”

On appeal, the Petitioner references his “skillsets and experiences” and provides general information about the offshore oil and gas industry and other naval and marine industries, including industrywide revenue and job-creation figures. The Petitioner also references his potential employer's 10-year estimate for revenue and job growth. The Petitioner further references articles that address the COVID-19 pandemic's effect on the oil and gas industry.

We first note that the articles referenced on appeal that address the COVID-19 pandemic's effect on the oil and gas industry may not establish eligibility. A petitioner must establish eligibility at the time of filing a visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'1 Comm'r 1978). Because the Petitioner filed the petition in 2018, before the beginning of the COVID-19 pandemic, those articles present a set of facts that did not exist at the time of filing the petition and they may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Furthermore, even if those articles could establish eligibility, they do not discuss the Petitioner or his proposed endeavor; therefore, they bear minimal probative value for the first *Dhanasar* prong.<sup>3</sup>

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on 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

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<sup>3</sup> A petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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.

The record does not establish that the proposed endeavor rises to the level of national importance. *See id.* First, the Petitioner’s assertion on appeal that his potential employer’s 10-year estimate for revenue and job growth establishes the national importance of his proposed endeavor is misplaced. The prospective employer’s 10-year estimate does not reference the Petitioner or the proposed endeavor. Accordingly, the Petitioner’s prospective employer appears to anticipate generating that revenue and hiring those workers regardless of whether the Petitioner chooses to work for the employer. Therefore, the record does not establish that the proposed endeavor will be a significant factor for the prospective employer to generate that revenue or hire those workers. In turn, articles and industry reports in the record provide generalized information about industries including offshore oil and gas; but they do not address the Petitioner, his proposed endeavor, and how the specific endeavor will have substantial positive economic effects that rise to the level of national importance. *See id.* Relatedly, although the Petitioner’s qualifications and prior career accomplishments, discussed on appeal, are material to the second *Dhanasar* prong, they do not address how the prospective endeavor may have national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.