



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

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

In Re: 20453567

Date: MAR. 17, 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 research analyst, 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 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 documentation 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 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)

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).

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 record indicates that Petitioner qualifies as a member of the professions holding an advanced degree.³ 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

At the time of filing, the Petitioner was serving as a “Research Analyst III” for the [redacted] [redacted]. With regard to the Petitioner’s research duties, the record includes a letter from [redacted], Director of Research with [redacted] indicating that the Petitioner’s work involves “understanding and preventing recidivism and assaults in juvenile detention facilities.”⁴

Regarding his claim of eligibility under *Dhanasar*’s first prong, the Petitioner stated in response to the Director’s request for evidence (RFE) that his proposed endeavor involves conducting research relating to juvenile detention and the juvenile justice system at [redacted]. He asserted that his proposed “work is helping the Department fulfill its mission: “Placing each youth at the right place, in the right program.” The Petitioner explained that his undertaking includes developing “tools to properly identify and classify young people” in the [redacted] system and “to verify whether the recommendations obtained from such instruments are being followed.” He also indicated that he planned to analyze recidivism variables “in the state of [redacted] such as involvement with Department of Children and Families (Child protective services), gang involvement or affiliation, family composition type, parent educational level, family income level, and school involvement after release.” The Petitioner further stated that his proposed endeavor includes uncovering “the driving forces behind assault incidents in [redacted]” and proposing “policy changes aimed to either reduce or to prevent future assaults.” Moreover, he indicated that he plans to investigate whether “assaultive or violent behaviors observed in [redacted] residential facilities subscribe to the importation theory or can they be better explained by the exportation theory instead.”

In addition, the Petitioner claimed that his research could be “applied to other states as well.” He contended that his “plan is to extend the scope of our research to other juvenile institutions across the country. Doing so, could help shed light on the factors driving recidivism among young people in the United States, and help shape policies aimed at combating this phenomenon.” He further asserted that he intends “to assess the risk to recidivate for minority [*sic*] involved with the juvenile justice system in other state-run facilities.” The Petitioner, however, has not provided evidence from [redacted] or other state agencies outside of [redacted] to corroborate his claims relating to the potential prospective impact of his proposed endeavor.

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

³ The Petitioner received a Master of Science degree in Economics from [redacted] University in 2010.

⁴ 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 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* framework.

The record includes a letter of support from [redacted], Director of Clinical Services for [redacted] stating: “While working in the agency, [the Petitioner] has been able to analyze data available in the Department to examine factors related to how the adolescents are doing in our care. . . . He is presently working on advanced modeling techniques which will add greater insight to our understanding of these factors.” [redacted] further indicated that the Petitioner’s work at [redacted] “benefits both the agency and the state as we work to provide resources and supports for youth so that they leave the Department’s care as pro-social adults,” but she does not discuss the broader implications of the Petitioner’s proposed endeavor beyond [redacted] and the youth it supports.

Likewise, the letter from [redacted] indicated that the Petitioner’s work for [redacted] involves analyzing “the effectiveness of parenting and re-entry programs in place in our juvenile facilities” and managing “data requests from internal and external stakeholders.” Additionally, [redacted] stated that the Petitioner has been tasked with investigating “the factors that are the driving forces behind juvenile assaults” at [redacted] facilities and proposing “corrective and effective actions.” While [redacted] asserts that the Petitioner’s work “has the potential to provide benefits to the Department of Youth Services and the populations we serve,” he does not elaborate on the wider implications of the Petitioner’s undertaking beyond [redacted] and the juveniles it serves.

The letters of support from [redacted] and [redacted] mainly focus on the Petitioner’s skills, knowledge, and past work experience rather than the national importance of his proposed endeavor. The Petitioner’s skills, knowledge, and prior work 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 aforementioned letters presented by the Petitioner do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that his proposed work offers broader implications in the social services field that rise to the level of national importance.

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 had not provided supporting evidence showing that his undertaking “will have broader implications, or national or global implications” in his field. Additionally, the Director indicated that the Petitioner had not demonstrated that his proposed work “has significant potential to employ U.S. workers,” offers “substantial positive economic effects,” or “will broadly enhance societal welfare.”

On appeal, the Petitioner submits a letter that repeats the information he provided in response to the Director’s RFE, but he does not specifically identify any erroneous conclusion of law or statement of fact in the Director’s decision. He asserts that a waiver of the required job offer, and thus of the labor certification, is in the national interest pursuant to *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*). However, in December 2016, our *Dhanasar* precedent decision vacated the *NYSDOT* framework.

The appellate submission includes two reports, entitled [redacted]
[redacted] and [redacted]

[redacted], These two reports, however, do not demonstrate the Petitioner's proposed endeavor's prospective impact on a broader scale beyond [redacted]

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 research analysis services for [redacted] 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 [redacted] to impact the social services field or societal welfare 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 his 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.