



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

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

In Re: 20412830

Date: MAR. 31, 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 mechanical engineer and software programmer, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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.

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.

Furthermore, 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 matter of discretion², 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 In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² 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.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ Accordingly, the issue to be determined on appeal 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 eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating that he has “two research projects” that “are high potential ones, capable of providing cutting edge business and engineering solutions to small businesses at very low cost!” As it relates to the first project, the Petitioner claimed:

The name of my IT research project is called [REDACTED]
[REDACTED]
[REDACTED] It is designated for clinic, church, daycare, hotel, etc.

... [REDACTED] combines [REDACTED] and many other automated functions to create communication between business and its customers. The goal is to bring services to small businesses at reduced cost!

Regarding the second project, the Petitioner asserted:

The project is a [REDACTED] machine. The design aim is to produce a machine that requires minimal machining components. The machine is to utilize locally sourced materials and will be low in cost to manufacture. The ultimate goal is to produce functional machine for local artisans that may not have a thousand dollars to spend on similar products out there.

In support of his projects, he provided two authored research project documents entitled, [REDACTED]
[REDACTED] and [REDACTED]
[REDACTED] describing the backgrounds, methodologies, and objectives of the projects.

In response to the Director’s request for evidence, the Petitioner further elaborated:

[REDACTED] is a-four-in-one project. It is a research work on typical workflow in any customer-facing business scenario where such business offers services such as [REDACTED]
[REDACTED] routines. It deals with how a business can manage influx

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Director concluded that the Petitioner meets the classification as a member of the professions holding an advanced degree, a determination regarding his classification as an individual of exceptional ability is moot.

or surge or traffics with respect to schedules, check-ins, notifications, and responses through automation without stressing its limited resources such as materials, equipment, and personnel. The project, which began with Microsoft Excel spreadsheet has translated into programming through the applications of various APIs (Application Programming Interfaces). The project is now in testing and development phase. The four platforms in [redacted] are designed for typical clinic, hotel, church, and daycare business processes. Small businesses could benefit from [redacted] services by taking advantages of its modern IT services' offerings to communicate with their customers. It has been on continuous publication on the Microsoft Azure cloud platform and is being tested with further development by a local user.

....

[redacted] is my second research project that deals with a [redacted] machine by the action of a [redacted], propelled by a prime mover. It is developed to [redacted] coming out from the sawmills or right off the shelves of the [redacted] [sic] stores. For the design under consideration, [redacted] [redacted] is used to make all designs calculations and estimates. The design, power and machine components capabilities are scalable to lower or higher inches of [redacted] as needed in production phase. The project concept is uniquely being researched to eliminate complexity in a typical [redacted] machine design and manufacture with readily available materials, thereby keeping the machine simple in design and low in cost. The main objective is to eliminate or reduce foundry technologies, welding, or any other complex manufacturing methods in producing a [redacted] machine. Therefore, more than fifty percent of the body components will be woods woven in angle iron bars for strength and stability.

The Petitioner also submitted a [redacted] and a list of potential investors for [redacted]. The Director determined that the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal,⁵ the Petitioner maintains:

In specific terms, I have two projects, both aimed at lowering costs to potential users. As already mentioned, the second project is still undergoing final design reviews and all efforts is concentrated on the first project [redacted] for now. This first one is the IT project, and this appeal is based on it. The design aim is to reach a particular niche that are often neglected in the United States and across the globe—the small businesses! Small businesses are jobs creations machines in the United States. [redacted] will be registered in Texas in August 2021 when registered, it will produce services at lower costs to small businesses.

⁵ On appeal the Petitioner provides two independent assessments, a projected sales forecast, customer support emails, and evidence of an Employer Identification Number for [redacted]. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide if for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

For the reasons discussed, we agree with the Director that the Petitioner has not sufficiently shown the national importance aspect of his proposed endeavor. On appeal, the Petitioner claims that [redacted] [redacted] not only agreed to adopt the software for use but have agreed to advance up to \$500K for initial seed investment” and “we have five potential investors on the list already.” The Petitioner’s ability to procure funding for his projects relate to the second prong of the framework, which “shifts the focus from the proposed endeavor to the foreign national.” See *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner’s work satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. The relevant question is not the importance of the fields or industries for which the individual will work; instead we focus on “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” 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. Here, the record does not sufficiently explain or document the potential prospective impact of the specific proposed endeavor to support a finding that it has national importance.

Although his documents describe how each project would work, including technologies, costs, and marketing strategies, the Petitioner did not demonstrate the impact of either of his projects in the business or [redacted] or design field. An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. See *Dhanasar*, 26 I&N Dec. at 889. Here, the record does not show any national or worldwide ramifications his projects would have within a field.

Similarly, while the Petitioner’s statements reflect his intention to provide more efficient business and design or manufacturing services for his clients, 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. In this case, the Petitioner did not show that his proposed endeavor stands to sufficiently extend beyond his potential clients or customers to impact the various industries 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. The Petitioner did not establish the benefits to a regional or national economy resulting from the Petitioner’s undertaking would reach the level of “substantial positive economic effects” as contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner claims that [redacted] will operate as an IT service that will require teams of employees” and “will naturally create jobs and generate revenue,” the Petitioner’s evidence does not support his assertions, nor did he offer evidence indicating that the areas where the projects would be implemented are economically

depressed, that the projects would result in employing a significant population of workers in the areas, or that his endeavors would offer the regions or their populations a substantial economic benefit through employment levels or business activity. Accordingly, the Petitioner's proposed works do 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.⁶

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that 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.

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in 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).