



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

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

In Re: 23058854

Date: NOV. 8, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or 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 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 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 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 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner initially indicated that he intends to work in the United States “focusing on innovation of intelligent and robotic products for sweeping and floor washing and mowing in commercial sites environmentally friendly, to provide more efficient, cheaper and safer effective robotic solutions for the labor shortage problems and challenges in related fields caused by the aging population.”

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. In response, the Petitioner offered a “Personal Plan” asserting that he intends to “start a company in the U.S. and pay the wages of American workers, as well as the production and sales of products for the first stage.” The Petitioner further stated:

[I]n addition to setting up what company in the U.S. so as to produce consumer robots and provide commercial technology services for companies or manufacturers in the relevant fields in the U.S., I will:

- Establish a U.S.-based intelligent remote-control cloud computing center that can reach robots across the world to provide data-acquisition analysis and intelligent remote-control services for the intelligent Internet of Things (IoT) and service robots sold across the globe.
- Provide consulting service to local companies, helping them to achieve better object recognition and intelligent obstacle-avoidance functions for industrial and domestic robots.
- Invest in and achieve more intelligent, environmentally friendly, and safer commercial robot products in the field of sanitation, cleaning, and maintenance, such as commercial sweeping and floor washing and mowing, in order to cope with the labor problems and challenges caused by the aging population.
- Over the long-term, establish an independent service robotics brand and hire U.S.-based software engineer and sales teams, to make the products meet and adapt to the local application scenarios.

The Petitioner’s “Personal Plan” includes information about global and U.S. talent shortages, the value of highly-skilled immigrants, technological innovation as a key to economic growth, the artificial

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

intelligence talent gap, the growing demand for robotics engineering jobs, and U.S. worker shortages.<sup>3</sup> In addition, his plan offers general information about scientific research and development in the United States, demand determinants in his industry, business location considerations, and adoption of service robots. The plan also includes the Petitioner's professional summary, testimonials from colleagues, and a discussion of how he will contribute to U.S. technological interests.

The Petitioner's RFE response contains an *Investopedia* article, entitled "The 5 Industries Driving the U.S. Economy." This article indicates that the tech sector represents a major component of the U.S. economy and that employment in computer and information technology is expected to grow more than ten percent over ten years. The article further states: "The impact of the tech industry has affected nearly every state and . . . the industry is ranked in the top five of economic contributors in 22 states and in the top ten of 42 states."

The record also includes letters of support from colleagues who oversaw the Petitioner's work. For example, his former mentor, [REDACTED] asserted that the Petitioner is conducting important work "in the area of Robotics, as he bridges this technology with the Internet of Things . . . . At robotics companies across America, the comingling of engineering and science is producing some truly innovative products - things that do what humans have typically done, only better." [REDACTED] further indicated that "the interconnected aspects of robotics and IoT significantly advance technology" and that the Petitioner "is at the forefront" of this work.

Likewise, [REDACTED] former Senior General Manager at [REDACTED] stated:

Cloud technologies have transformed the way people live and perform daily tasks, and now, cloud technology has come to robotics. Servers are designed to store and manage data, run applications, and deliver content. These applications are now seeing massive growth in the robotic industries' space, as cloud robotics are enabling the use of cloud computing, cloud storage, and other technologies that focus on a centralized infrastructure and the benefits of shared services. . . . Cloud robotics allows for higher levels of human robot interaction and learning and is contributing to the digital transformation of companies.

While the information in the Petitioner's personal plan, the *Investopedia* article, and the aforementioned letters of support help show that his proposed robotics work has substantial merit,<sup>4</sup> this information is insufficient to demonstrate the national importance of his particular proposed endeavor in the United States. The aforementioned documentation does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show

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<sup>3</sup> The Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed labor shortages. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

<sup>4</sup> "The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Evidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavor's merit may be established without immediate or quantifiable economic impact. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." *See Dhanasar*, 26 I&N Dec. at 889.

that his specific undertaking offers broader implications in the 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 indicated that the Petitioner had not provided supporting evidence documenting his “plans for work continuation in the U.S.” or otherwise detailing how his endeavor would be undertaken in our country. Additionally, the Director stated that the Petitioner had not demonstrated that his “proposed endeavor has significant potential to employ U.S. workers or other substantial positive economic effects.”

In his appeal brief, the Petitioner argues that the Director’s statements regarding “a need for U.S. contract ‘agreements’ and/or ‘evidence identifying any potential United States manufacturers or users of [the Petitioner’s] products’” were in error as such documents are not required under prong one of the *Dhanasar* framework.<sup>5</sup> Despite some problematic language in the Director’s decision, the record before him supported the determination that the Petitioner had not provided sufficient information and evidence regarding his “plans for work continuation in the U.S.” to show his proposed endeavor’s national importance. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

The Petitioner further asserts that his prior work has “led to 9 patents and 8 software copyrights” and “has brought great economic benefits to several companies, including [redacted] a home automation company in [redacted].” He points to a letter from [redacted] chief executive officer and co-founder of [redacted] stating:

The business cooperation with [the Petitioner] and his team has been almost four years since the beginning of 2016. [The Petitioner] and his team have very solid and stable technical skills, and the products they provide have a very good quality guarantee. Thanks for [the Petitioner] and his team providing the core cloud service and hardware PCB for our products. The dedication of them is the cornerstone of the success of [redacted] products. . . . [W]e will have more close cooperation with [the Petitioner] and his team absolutely.

The Petitioner’s technical skills, patents, and copyrights; his experience in providing cloud services and hardware; and the interest of his customers 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.

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

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<sup>5</sup> Such evidence, including “the interest of potential customers, users, investors, or other relevant entities or individuals,” is more relevant to the second prong of the *Dhanasar* framework. *Id.* at 890.

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 produce consumer robots and provide commercial technology services for companies or manufacturers; to establish a U.S.-based intelligent remote-control cloud computing center that can reach robots across the world to provide data-acquisition analysis and intelligent remote-control services; to provide consulting service to local companies; to invest in and achieve more intelligent, environmentally friendly, and safer commercial robot products in the field of sanitation, cleaning, and maintenance; to develop an independent service robotics brand; and to hire U.S.-based software engineer and sales teams to make the products meet and adapt to the local application scenarios, 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his future company and its customers to impact the robotics industry 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 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.