



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

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

In Re: 26375080

Date: APR. 12, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a mechanical engineer, seeks classification as an individual of exceptional ability in the sciences, arts or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

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. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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.

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, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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 noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

We first note that, in the decision, the Director did not address whether the Petitioner qualifies for second-preference classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* section 203(b)(2) of the Act. However, in a prior request for evidence (RFE), the Director stated that the Petitioner “submitted evidence with Form I-140 which establishes [he] holds a bachelors [sic] degree in mechanical engineering and thus qualifies as a member of the professions holding an advanced degree. Therefore, at this time, USCIS does not need to evaluate whether [he] also qualifies as an alien of exceptional ability.”

The Director's statement that a bachelor's degree alone qualifies an individual as a member of the professions holding an advanced degree is incorrect as a matter of law. The regulations define “advanced degree” as “any United States academic or professional degree or a foreign equivalent degree *above that of a baccalaureate*.” 8 C.F.R. § 204.5(k)(2) (emphasis added). Although a bachelor's degree followed by at least five years of progressive experience in the specialty may be considered the equivalent of a master's degree, *see id.*, a bachelor's degree alone cannot qualify an individual as a member of the professions holding an advanced degree under the relevant regulations. *See id.* Therefore, we withdraw the Director's conclusion that the Petitioner's bachelor's degree in mechanical engineering alone qualifies the Petitioner as a member of the professions holding an advanced degree. However, because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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”); *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).

Initially, the Petitioner described the endeavor as a plan to “settle in this country and contribute to the development of the [o]il and [g]as industry wherever it is required.” Although the Petitioner provided more information about his prior experience, he did not initially elaborate on what the prospective endeavor, generally contributing to the development of the oil and gas industry, would entail. In an RFE, the Director informed the Petitioner that the record did not provide sufficient information about the proposed endeavor in order to determine whether it has substantial merit. In relevant part, the Director requested a detailed description of the proposed endeavor and documentary evidence that supports the Petitioner's statements and establishes the endeavor's merit.

In response to the Director's RFE, the Petitioner elaborated that "contributing to the [e]nergy and [o]il & [g]as sector" would entail:

working as [c]onstruction [m]anager in [e]ngineering, [p]rocurement and [c]onstruction projects of refining plants, power generation, and [liquified natural gas (LNG)] generation, handling and transportation, as well as major repairs to existing plants or expansion works of the same; contributing [his] technical knowledge and experience in the construction area, solving critical problems during the different phases of the life cycle of the projects, solving the needs of the company and the client.

The Petitioner also stated in response to the RFE that his duties as a construction manager would include the following:

developing execution plans to ensure the safety, quality, and performance of the construction work, coordinating personnel's day-to-day activities, organizing construction coordination meetings, inspecting the material and equipment received, supervising preventive maintenance during storage, management and supervision of installation of equipment, piping, and other structures, managing the quality of construction work, reviewing and approving the hydrostatic and pneumatic tests to be performed, start-up of the planning and coordination of the pre-commissioning and start-up of the constructed units and other highly specialized services related to the most crucial phases of the extraction, handling and transportation of natural gas products (such as [l]iquefied [n]atural [g]as) and petroleum products.

The Petitioner further stated that, through his services:

companies in the oil and gas industry will be able to count on the knowledge and experience that will allow them to develop, optimize and complete constructions and/or repairs of extraction, refining, treatment and transportation units of natural products and petroleum derivatives in a safe and controlled manner and with levels of quality and performance that meet the expectations of the clients, thus contributing to the development and growth of this industry at a national level, guaranteeing reserves and supplies according to the requirements of international customers.

The Director concluded that "[t]he documentary evidence submitted does not support the [P]etitioner's statements that the proposed endeavor has substantial merit." Although the Petitioner's initial description of the proposed endeavor did not provide sufficient information to determine its merit, the Petitioner's RFE response clarified what the proposed endeavor would entail. We withdraw the Director's finding that "the [P]etitioner has not established that the proposed endeavor is of substantial merit." Instead, we acknowledge that the record indicates that the proposed endeavor has substantial merit.

The Director also concluded that "the [P]etitioner has not shown [his] proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly" and thus, "has not established that the proposed endeavor is of national importance."

On appeal, the Petitioner asserts that his proposed endeavor of working as a construction manager will “support[] the American oil and gas industry itself as well as all other sectors and industries that depend or rely on it [and] boost[] the U.S. economy and job market.” The Petitioner also references generalized information about the oil and gas industry in the record, including a one-page information sheet, dated 2020, from the U.S. Department of Energy titled, *The Economic Benefits of Oil & Gas*; a report prepared in 2021 for the American Petroleum Institute by Pricewaterhouse Coopers titled, *Impacts of the Oil and Natural Gas Industry on the US Economy in 2019*; and an apparent self-published blog post, dated [redacted] 2022, from Wood Mackenzie’s Vice Chair-Americas, Ed Crooks titled, *Opinion: [redacted]*. The Petitioner also references a combined letter of reference and letter of interest in the record from [redacted], and states that he “is currently providing his expert services for the construction, pre-commissioning, commissioning, and start-up of the [redacted] TX, LNG production and transportation plant—a project in excess of \$1 [b]illion with an expected capacity of 16 million tons of LNG per year.”

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 [noncitizen] 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 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 Petitioner’s references to generalized information about the oil and gas industry is misplaced. Neither the 2020 one-page information sheet from the U.S. Department of Energy, nor the 2021 Pricewaterhouse Coopers report, nor Ed Crooks’ 2022 opinion blog post about an LNG boom discuss the Petitioner; his proposed endeavor; and how the specific endeavor the Petitioner proposes to undertake may have “national or even global implications within a particular field” or broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects.” *Id.*

Instead, as the Director noted, the record indicates that the proposed endeavor will benefit his employer and its clients. Specifically, as quoted above, the Petitioner asserts that his endeavor will “solv[e] the needs of the company and the client,” “allow [companies in the oil and gas industry] to develop, optimize and complete constructions and/or repairs,” and “meet the expectations of the clients.” Relatedly, the combined letter of reference and letter of interest from [redacted] states that the Petitioner’s services “will directly impact the company’s market positions and bottom line financials,” again addressing how the proposed endeavor will benefit the Petitioner’s employer but not establishing that it will have broader implications. *See id.* Although the Petitioner emphasizes the scope of his current “project in excess of \$1 [b]illion with an expected capacity of 16 million tons of LNG per year,” the Petitioner does not explain how the project for his employer—and any other such project that may fall within the proposed endeavor—has broader implications, “such as those resulting from certain improved manufacturing processes or medical advances,” “significant potential to employ U.S. workers or . . . other substantial positive economic effects” beyond benefitting his employer and its client. *Id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; 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 Bagamashad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

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.