



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

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

In Re: 24187283

Date: FEB. 2, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrical engineering researcher, seeks employment-based second preference (EB-2) 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 Nebraska 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. The matter is now before us on appeal.

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 sustain 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. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole 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.

At the time of filing, the Petitioner was employed as a staff engineer at [REDACTED] Electronics.² In this capacity, the Petitioner is involved in research aimed at “the development of smaller and more efficient semiconductor technologies for various computing applications.” Specifically, he is responsible for researching and developing “future advanced technology trends that evaluate new structures (Buried Power Rail, Backside Power Distribution Network, 3D Stacked devices) for value proposition to achieve area scaling, power/performance goals and discovery of methods to improve the performance of next-generation semiconductors.”

With regard to his proposed endeavor, the Petitioner stated that he intended to continue his research involving “advance circuits, process design failures, and semiconductor architectures to improve the power, performance, and area of standard computing cells in order to develop next-generation semiconductor technology.” He explained that his “research on next-generation semiconductor technology will focus on the development of semiconductor processes and design logic beyond 3 nm.” The Petitioner further indicated that that his work on these projects will be shared with others in the field through his “U.S. patent publications and peer-reviewed articles.” For the reasons discussed below, we conclude the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

We withdraw the Director’s determination that the Petitioner did not establish the national importance of his proposed endeavor under *Dhanasar*’s first prong. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. As evidence that his proposed research has substantial merit and national importance, the Petitioner presented information about the global semiconductor market, the U.S. semiconductor industry, and research and development in that industry.³ His evidence included letters of support discussing how his undertaking contributes to advancements in the development of improved semiconductor technologies. Additionally, the Petitioner submitted documentation indicating that the benefit of his proposed research offers broader implications for the field of electrical engineering, as the results are disseminated to others in the field through publication and presentation of his work. As

² 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 research 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.

³ This information included articles about U.S. Government initiatives to expand our country’s U.S. chip manufacturing industry and sustain its competitiveness.

the Petitioner has demonstrated both the substantial merit and national importance of his proposed research, he has established that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

We agree with the Director's determination that the Petitioner satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

We withdraw the Director's determination that the Petitioner did not establish that he meets *Dhanasar's* third prong. This prong requires a 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. *Id.* at 890. As an electrical engineering researcher, the Petitioner possesses considerable experience and expertise in advanced circuitry, process design, and semiconductor architecture. The record also demonstrates the widespread benefits associated with research progress in the development of next-generation semiconductor devices. In addition, the Petitioner has documented his past successes in semiconductor research and advanced technology development. Based on the Petitioner's track record of successful research and the significance of his proposed work to advance U.S. technological interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available. The Petitioner, therefore, satisfies the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.