



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

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

In Re: 24215680

Date: MAR. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil and mechanical engineer specializing in transportation issues, 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 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 did not establish that a waiver of the classification's job offer requirement 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. 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 discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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 proposed endeavor has both substantial merit and national importance;
- 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 determined that the Petitioner was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner's academic background includes his undergraduate and graduate degrees, as well as coursework in environmental, mechanical and electronics engineering. He states that he has served as a technical specialist at [redacted] University since 2016. As a technical specialist, the Petitioner states that he develops exams and distributes grades for civil, material and surveying engineering students, supervises the daily operations of the laboratory, reviews data analysis, and advises students on course scheduling and academic planning.

The Petitioner also states that he has worked on research projects with the university and for the public transportation system in [redacted] County, Texas (which includes [redacted]). In his personal statement he lists his academic projects, all completed during his graduate studies, as analyzing travel demand in the [redacted] area, studying pedestrian and bikeway connectivity in [redacted] water and wastewater treatment and testing, and conducting an environmental assessment of a university building project in [redacted]. In a personal statement, the Petitioner states that his "'field of endeavor' over the next several years is to continue working in the civil and mechanical engineering [field], specifically concerning transportation issues such as Intelligent Transportation Systems (ITS), and other related activities."

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, recommendation letters, and evidence of his past research.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Director concluded that the Petitioner established that the proposed endeavor had substantial merit. However, the Director determined that the Petitioner had not established that the proposed endeavor was of national importance, that he was well positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

In the RFE, the Director noted that the record lacked evidence to corroborate the Petitioner's claim that his proposed endeavor had broad implications on the field of transportation. He also noted that, although the record included evidence attesting to the Petitioner's accomplishments, it lacked evidence

² The record demonstrates that the Petitioner holds a master of science degree in transportation, planning and management issued by [redacted] University in 2015. The Petitioner also earned a bachelor of science degree in civil engineering technology from [redacted] University in 2012.

of the Petitioner's track record, financial support, plans and progress for driving the endeavor forward, and projections of future work in the proposed endeavor.

The Petitioner's response to the RFE includes an updated personal statement, additional recommendation letters, and descriptions of three requests for grant funding submitted by the Petitioner and his colleagues. In his updated personal statement, the Petitioner further describes his proposed endeavor as follows:

I will be working on street bus operation management in in the coming year, analyzing the various causes of poor service reliability ... Another project I will be looking into is the pedestrian and bicycle safety in bus/[bus lane] corridors ... These proposed activities will contribute to the improvement of the overall functionality of the United States' transportation system translating to improved livability in American communities ...

The Petitioner also submits summaries of three "ongoing research projects," which include bike and pedestrian safety, access to vehicle bridges, and service reliability of public transit.

After reviewing the Petitioner's RFE response, the Director concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, that he is well positioned to advance her proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, the Petitioner submits copies of the USCIS Policy Manual and a policy alert regarding national interest waivers for Science Engineering Technology and Mathematics (STEM) fields, as well as copies of relevant case law and an unpublished non-precedent AAO decision. The Petitioner asserts that the Director did not properly apply USCIS policy and contends he made legal and factual errors, including in failing to consider evidence submitted in response to the RFE as support for his eligibility for a national interest waiver at the time of filing.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

As noted above, the Director concluded that the Petitioner's proposed endeavor in the field of transportation and engineering has substantial merit. However, he determined that the Petitioner did not demonstrate how his proposed endeavor will broadly impact the field of transportation and engineering to establish national importance. He noted that the Petitioner did not demonstrate that his academic duties would extend beyond the university to impact the field more broadly, and that the record lacked documentary evidence of the projects described in the Petitioner's proposed endeavor in transportation research. The Director noted that the evidence submitted in response to the RFE, including the grant funding and descriptions of ongoing projects, did not support the Petitioner's

eligibility for a national interest waiver at the time of filing, as the description of the proposals is dated “2020-2021” and the grant announcement is dated 2021, after the petition’s filing in October 2019.³ He therefore determined that the evidence was not probative in demonstrating that the Petitioner’s specific proposed endeavor has national importance.

On appeal, the Petitioner asserts that the Director should have given consideration to the evidence submitted in response to the RFE, even if it post-dated the filing date. He further asserts that the Director arbitrarily applied a higher standard of evidence in requiring that he establish national importance by demonstrating that his proposed endeavor will have national implications.

In attempt to support a finding of national importance, the Petitioner points to the USCIS Policy Manual which states that “USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress.” Specifically, the Petitioner references 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>, noting that an indicator of STEM areas importance to the United States is inclusion in the President’s annual research and development priorities. He states that “success in Transportation Engineering & Planning, especially in low-income areas is **EXACTLY** the type of work [the President] is supporting (emphasis in original).”

Although we agree that STEM fields are important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner’s specific proposed endeavor. The record contains insufficient information or evidence regarding the Petitioner’s proposed endeavor to show broad potential implications demonstrating national importance.

The three items described in the funding request submitted by the Petitioner and two other colleagues include summer graduate research, student participation in professional conferences, and summer undergraduate enhancement. None of the descriptions in the funding request specifically identifies transportation planning and management as a component of the project. These items appear to relate only to the Petitioner’s responsibilities as a technical specialist at the university, including teaching and academic advisement. The Petitioner does not explain how this evidence demonstrates the national importance of his proposed endeavor related to transportation. In fact, on appeal the Petitioner states that he “never argued that his classroom ‘academic duties’ are the reason why his NIW should be approved.” Therefore, we conclude that the evidence of the grant funding related to his position with the university does not demonstrate the national importance of the Petitioner’s proposed endeavor.

In his research proposal summaries, the Petitioner identifies his ongoing research projects as studies on bike and pedestrian safety in bus rapid transit corridors, on the design and implementation of access to vehicle bridges, and on improving service reliability of public transit systems. The summaries describe the problem to be studied, the objective of the research, the information to be gathered, and the proposed methodology for each project. However, the summaries do not discuss the intended use of the study results, including publication or presentation of the work throughout the field. Although

³ A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

the proposed methodology includes “survey of agencies” and “major technology companies,” the specific agencies and companies are not identified in the summaries or in other supporting evidence. Without sufficient detail, we cannot conclude that the Petitioner’s proposed endeavor rises to the level of national importance. It is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

When determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to his past research and academic positions, rather than his specific proposed endeavor. Although the Petitioner states on appeal that his RFE response included “grant applications with the Transportation Research Board,” and two of the recommendation letters mention the Petitioner’s grant proposals to the Transportation Research Board, no documentary evidence of these proposals was submitted.⁴ The Petitioner also states on appeal that, in addition to “probative expert letters,” he “provided other evidence discussing the immense significance of U.S. advances in this field.” However, the Petitioner does not identify the specific evidence in the record that addresses the potential impact of his specific proposed endeavor on U.S. advancement in the field of transportation and engineering. The record does not include articles, reports or other evidence to support the claimed potential prospective impact of the Petitioner’s proposed endeavor. Even considering the descriptions of the Petitioner’s ongoing projects and letters of recommendation collectively and in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

The Petitioner asserts that the Director arbitrarily applied a higher standard of evidence in requiring that he establish national importance by demonstrating that his proposed endeavor will have national implications. However, the Petitioner does not identify specifically where in the Director’s decision a higher standard was applied. Upon review, we conclude that the Director does not state or impose a higher standard of evidence.

Upon review of the record, we conclude that the evidence does not demonstrate the national importance of the Petitioner’s proposed endeavor. To establish national importance, the Petitioner must demonstrate the proposed endeavor’s impact. In *Dhanasar*, we 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.* at 889. 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, as set forth above, the Petitioner has not submitted sufficient evidence to establish what the broader implications of his work would be, or that his work would impact his field more broadly to demonstrate national importance.

⁴ Although the record includes the Petitioner’s research proposal summaries, none of the summaries state that a funding request was made to or approved by the Transportation Research Board and the record does not include documentary evidence to support this claim.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose.⁵

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.

⁵ Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he was well-positioned to advance the proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner is eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.