



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

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

In Re: 28953213

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business management specialist, 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that he qualifies for the requested national interest waiver. 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision contains a material factual error, lacks sufficient analysis of the evidence in the record, and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Further, the Director did not make a determination regarding the Petitioner's eligibility for the requested EB-2 classification. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree 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 for EB-2 classification, 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- 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. NATIONAL INTEREST WAIVER

The sole issue addressed by the Director is whether the Petitioner established that a waiver of the job offer requirement, and thus a labor certification, would be in the national interest.

At the time of filing in June 2020, the Petitioner submitted a statement summarizing his educational background and his professional experience in the areas of new business development, institutional sales, and investment banking. He described his proposed endeavor to work as a business management specialist as follows:

I [propose] to help organizations within the United States in high-level decision making based on a realistic assessment of all potential and economic impact. Through new initiatives, I will be able to improve overall business prospects and drive the growth of companies that need special assistance in the commercial, financial and energy sectors.

In response to the RFE, the Petitioner indicated his intent to work as a business management specialist and founder/CEO of [REDACTED] which was described in an accompanying business plan as a business consulting firm established in Florida in [REDACTED] 2020. The Petitioner stated his company “will specialize in providing financial, commercial, marketing and organizational consultancy for small- and mid-sized businesses” with the goals of helping clients “achieve sustainable growth through better financial performance.”

The Director, citing *Matter of Katigbak*, 14 I&N Dec. 45 (Reg’l Comm’r 1971) and *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm’r 1998), determined that the Petitioner had impermissibly made significant and material changes to his proposed endeavor and therefore declined to consider the business plan and other evidence submitted in response to the RFE. In reaching this conclusion, the Director observed that the Petitioner initially described his proposed endeavor “as continuing to work as a ‘Business Management Specialist’ specifically stating he is working as the Head of Energy at [REDACTED]” In his initial statement, the Petitioner indicated that he worked for this company in Brazil from 2016 until 2019. While he described the nature of his duties and how his experience is relevant to his proposed work in the United States, he did not indicate that his proposed endeavor in the United States would involve working for this company. Therefore, the Director’s description of the initial proposed endeavor is factually incorrect.

On appeal, the Petitioner emphasizes, and we agree, that he consistently indicated his intent to provide business and management advisory services to U.S. companies and did not materially change the

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).

proposed endeavor. He also submits a copy of the articles of organization for [redacted] demonstrating that the company was established in Florida on [redacted] 2020, prior to the filing of the petition, as stated in the previously submitted business plan. Although the business plan was created post-filing and submitted in response to the RFE, we conclude the evidence presented therein was provided to further document and explain how the Petitioner qualifies for a national interest waiver based on the proposed endeavor generally discussed in the initial filing.

The Director's incorrect determination that the Petitioner made material changes to the proposed endeavor resulted in an insufficient analysis of the evidence submitted in support of the three prongs of the *Dhanasar* framework. The Director concluded that "because the Petitioner has not provided consistent information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong [of the *Dhanasar* framework], or that he has established eligibility for a national interest waiver." The decision's remaining discussion of these two prongs was limited to the following statements:

The documentary evidence does not support the petitioner's statements that the proposed endeavor has substantial merit in an area such as business, entrepreneurialism, science, technology, culture, health, education, the arts or social sciences. Therefore, it has not been established that the proposed endeavor is of substantial merit and national importance. Additionally, after consideration of the following non-exhaustive list of factors, among others, the [petitioner] is not well positioned to advance the proposed endeavor.

The Director reached a similarly conclusory determination that the Petitioner did not meet the third prong of the *Dhanasar* framework, without discussing the specific documentary evidence considered or the factors weighed in reaching this conclusion.

When denying a petition, the Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, for the reasons discussed above, the Director incorrectly determined that the Petitioner had made material changes and inconsistent statements regarding his proposed endeavor, did not provide an analysis of the evidence submitted in support of the petition and in response to the RFE, and, as a result, did not sufficiently explain the reasons for denial. As written, the Director's denial notice did not afford the Petitioner a reasonable opportunity to provide specific responses on appeal to potentially overcome the basis of denial.

Therefore, we will withdraw the Director's decision and remand the matter to the Director for entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's response to the RFE and the appeal, to determine whether he has established eligibility under each of the three prongs of the *Dhanasar* framework. The Director should consider the Petitioner's evidence and arguments provided in support of each prong and provide an analysis of that evidence to support the conclusions reached.

III. ELIGIBILITY FOR EB-2 CLASSIFICATION

The Petitioner claims eligibility for EB-2 classification as a member of the professions holding an advanced degree. The Director's RFE included a request for additional documentation related to the eligibility requirements for this classification. However, as noted, the decision was limited to a discussion of the Petitioner's eligibility for a national interest waiver and did not include a determination on his eligibility for the underlying EB-2 classification. As the matter will be remanded to the Director for the entry of a new decision, that decision must address the Petitioner's eligibility for classification as an advanced degree professional.

IV. CONCLUSION

For the reasons discussed above, we are remanding this matter for the Director to enter an initial determination on the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree, and to consider anew whether the Petitioner qualifies for a national interest waiver as a matter of discretion. The Director should review the entire record and properly apply all three prongs of the *Dhanasar* analytical framework to determine if 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.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.