



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

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

In Re: 28427911

Date: OCT. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a maritime transportation and port operations specialist, 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 immigrant 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 the EB-2 classification as a member of the professions holding an advanced degree, but 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## 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.

If 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 (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,<sup>1</sup> 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification 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 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. Upon de novo review, we conclude that a remand is warranted in this case because the Director's decision lacks sufficient analysis and discussion of the evidence in the record.

The Petitioner's proposed endeavor is to "continue his activities as a Maritime Transport and Port Operations Specialist" and share his knowledge in the field of maritime transportation gained by working at [REDACTED] for over 14 years. The Petitioner proposed to provide consultation and training to any U.S. businesses to "ensure profitable commercial relations and foreign trade through efficient, safe, and reliable maritime transport." The Petitioner also stated that he will assist American companies in building business strategies in multidisciplinary areas, such as "maritime law, commercial law, international law, economy and accounting."<sup>2</sup>

Our exercise of discretion to waive the requirement of a job offer, and therefore a labor certification, requires adherence to all three of the *Dhanasar*'s prongs. Here, the Director did not include a determination on substantial merit and national importance of the Petitioner's endeavor under the first prong of the *Dhanasar* framework. The Director also did not discuss the evidence in concluding that the Petitioner did not meet the *Dhanasar*'s third prong. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. 8 C.F.R. § 103.3(a)(i).

In evaluating the *Dhanasar*'s first prong on remand, the Director should analyze the evidence and conclude whether the Petitioner's endeavor has substantial merit. 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director should also analyze the evidence and conclude whether the Petitioner's endeavor has national importance. *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,

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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).

<sup>2</sup> See the Petitioner's letter dated December 15, 2022, and his professional plan dated October 2022, submitted in response to the Director's RFE.

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 Director should consider if the record sufficiently describes and supports that the Petitioner has innovative methodologies or techniques that will impact the field of maritime transportation broadly, rising to the level of national importance. The Director should also consider if the Petitioner’s endeavor as a as a maritime transportation and port specialist has a significant potential to produce substantial positive economic effects in an economically depressed region or for the nation and whether the record contains corroborating evidence of such claims.

As to the third prong of the *Dhanasar* analytical framework, the Director stated the law and relevant considerations in performing the third prong’s balancing analysis. However, the Director did not discuss the evidence that he weighed in balancing those considerations nor address the Petitioner’s specific claims regarding his eligibility under the third prong. On remand, the Director should address all of the Petitioner’s arguments and evidence, and explain the relative decisional weight given to each balancing factor. *See* 8 C.F.R. § 103.3(a)(i); *see also* *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).

### III. CONCLUSION

For the foregoing reasons, we will withdraw the Director’s decision and remand the matter for further consideration of the record, including the claims and documentation submitted on appeal, and entry of a new decision to determine whether the Petitioner meets each prong under *Dhanasar*.

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