



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 28282430

Date: SEP. 21, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an aircraft mechanic, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.⁴

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 eligibility for 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 discretion⁵, 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. ANALYSIS

The Petitioner proposes to work in the United States as an aircraft mechanic. The Director did not make a determination whether the Petitioner is eligible for the underlying EB-2 classification. The Director found that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion.

A. Individual of Exceptional Ability

In his petition, the Petitioner asserted that he is eligible for the EB-2 classification as an individual of exceptional ability; however, the Director did not evaluate his claim. The Petitioner submitted evidence to meet all six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). On remand, the Director should evaluate the documentation to determine whether the Petitioner meets the requirements of an individual of exceptional ability.

² If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual>.

⁴ See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

⁵ 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).

B. Substantial Merit and National Importance

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The Director's decision concluded that although the Petitioner's proposed endeavor has substantial merit, the evidence does not demonstrate the national importance of the Petitioner's proposed endeavor. However, the decision does not sufficiently explain the basis for this determination.

The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.⁶ The Petitioner indicated that his proposed endeavor is to continue to work as an aircraft mechanic for a U.S. employer. He submitted his Counsel's letters, two professional plans, and correspondence from potential employers. We agree that the evidence in the record is sufficient to show that the Petitioner's proposed endeavor is of substantial merit.

On appeal, the Petitioner argues that the Director's decision erred by not acknowledging documentation submitted to establish his proposed endeavor has national importance. Also, the Petitioner argues that the Director did not provide an in-depth analysis of the documentation so that the Petitioner could understand the reason for it not establishing eligibility. The Petitioner points to evidence submitted with the petition and with his reply to a request for evidence, arguing that the documentation submitted establishes his proposed endeavor has national importance.

The Director's decision names documentation received to support the national importance of the Petitioner's proposed endeavor, namely a professional plan and an expert opinion. However, the decision does not sufficiently explain the reasons the documentation does not demonstrate the national importance of the Petitioner's proposed endeavor. Also, the Petitioner submitted additional documentation to show the national importance of his proposed endeavor, including an additional expert opinion, the Petitioner's resume, an additional professional plan, and Counsel's letters, which include explanations of the proposed endeavor and assertions of its national importance. However, the Director's decision did not reference or analyze these documents.

An officer must fully explain the reasons for denying a petition in order to allow a petitioner a fair opportunity to contest the decision and to allow an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994). In determining the Petitioner did not establish the national importance of his proposed endeavor, the Director's decision did not meaningfully address the evidence submitted with the petition or in response to a request for evidence.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the endeavor has national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. The Director should keep in mind that it is the national importance of the Petitioner's specific proposed endeavor that must be shown, not the importance of the overall field of aircraft mechanics. An endeavor having significant potential on the broader implications for a field or region,

⁶ See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(1).

generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.⁷ The Director should review the record to determine whether the Petitioner has demonstrated his proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

C. Well Positioned to Advance the Proposed Endeavor

For *Dhanasar's* second prong, the Director concluded, "You submitted sufficient evidence to meet prong 2." However, the Director's decision did not provide a basis for this determination.

The second prong shifts the focus from the proposed endeavor to the petitioner. We analyze whether the petitioner is well positioned to advance their proposed endeavor, and we look at several factors in making this determination. We consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the Petitioner is well positioned to advance the proposed endeavor. The Director should articulate the basis for finding whether the evidence shows or fails to show that he is well positioned to advance his endeavor.

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

As to the third prong of *Dhanasar*, the Director concluded that the Petitioner "has not established 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 Director's decision listed some of the evidence in the record and stated the law and the relevant considerations in performing the third prong's balancing analysis. However, the Director did not sufficiently discuss the evidence weighed in balancing those considerations or meaningfully address the Petitioner's specific claims as to the third prong.

On remand, if the Director concludes that the Petitioner does not meet *Dhanasar's* third prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

Accordingly, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification as an individual of exceptional ability. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if the Petitioner has established that a waiver of the requirement of

⁷ See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(1).

a job offer, and thus a labor certification, would be in the national interest. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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