



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

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

In Re: 30187772

Date: APR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an attorney, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* 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. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish 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 pursuant to 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. 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.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

## 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 of a labor certification, would be in the national interest. The Director concluded the Petitioner's proposed endeavor did not demonstrate eligibility for a favorable act of discretion to grant a national interest waiver of the requirement of a job offer, and thus the labor certification, under the first prong of the *Dhanasar* analytical framework. We reach the same decision as the Director, albeit on another basis.

The Petitioner initially proposed to "build [their] legal career in the US as a legal and tax expert in sustainable investment in the financial service sector and establish a private equity firm to attract US private investments in renewable energy infrastructure in emerging and developing countries." In support, the Petitioner submitted an article describing consumer and business interest in environmental, social, and governance issues from PwC, a copy of a 2021 Edelman Trust Barometer report on environmental, social, and governance issues relating to investing attitudes, a copy of U.S. Department of Commerce's Strategic Plan 2022-2026 entitled Innovation, Equity, and Resilience, a copy of International Energy Agency's report entitled Financing Clean Energy Transitions in

Emerging and Developing Economies, a copy of the Petitioner's resume, documentation and correspondence relating to the Petitioner's educational degrees, diplomas, and certificates, documentation describing the Petitioner's service as a student marshal at law school graduation and the Petitioner's invitation to speak at their law school banking class's graduation banquet, recommendation letters, several letters pertaining to employment the Petitioner has or had held, and copies of articles and op-ed pieces authored by the Petitioner. The evidence the Petitioner initially submitted did not sufficiently demonstrate the national or even global implications to their field or any broader implications rising to a level of national importance, did not adequately describe how well the Petitioner was positioned to advance the proposed endeavor, and did not satisfactorily demonstrate that on balance of applicable factors it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. So, the Director issued a request for additional evidence (RFE) to consider the merit of the proposed endeavor, its national importance, how well positioned the Petitioner was to advance the proposed endeavor, as well as the Petitioner's eligibility for a waiver of the job offer requirement and thus of a labor certification under the analytical framework we first discussed in *Matter of Dhanasar*.<sup>1</sup>

The Petitioner's response significantly departed from the proposed endeavor they indicated in their initial filing. In response to the RFE, the Petitioner submitted a business proposal for [REDACTED] [REDACTED] Saving Bank, list of community development financial institutions (CDFI) in Massachusetts, schedule of the qualifications and job descriptions for each role at [REDACTED] Saving Bank, report from Massachusetts Department of Environmental Protection on economically distressed communities, extract of U.S. strategic plans, business proposal of [REDACTED], United National Climate Panel report, International Energy Agency report, 2020 Sustainable Development Report, documentation of volunteer work, evidence of application for community leadership fund, correspondence with biogas digester manufacturers, copy of correspondence with bank representatives, draft of memorandum of understanding with suppliers training in renewable energy products, copy of fundraising flyer and correspondence with potential investors, copy of tele video conferencing with professional mentor, publication on proposed ESG disclosure requirements for investment advisors and companies, copy of Petitioner's article on the management of cashflows by small businesses post COVID 19, and copy of appointment to [REDACTED] Banking and Finance Committee. Contrary to their initial intention to "build [their] legal career in the US as a legal and tax expert in sustainable investment in the financial service sector and establish a private equity firm to attract US private investments in renewable energy infrastructure in emerging and developing countries," the Petitioner's proposed endeavor morphed into the Petitioner's ownership and operation of a distributor of biogas digesters from Chinese manufacturers in East Africa and an executive operating a community savings bank. In essence, the Petitioner transformed their proposed endeavor from a lawyer, legal professional, or private equity entrepreneur to a financier and business owner. The Petitioner's response to the RFE constituted a wholesale change of their proposed endeavor. In essence, over the course of these proceedings, the Petitioner has advanced four separate endeavors revolving around an apparent interest or experience in banking or finance. Whilst we recognize the laudable goals and ideals the Petitioner expressed, none of the four endeavors the Petitioner proposed

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<sup>1</sup> We have reviewed several pieces of correspondence the Petitioner submitted drawing attention to an update on USCIS' Case Status Online portal indicating the Director issued a second RFE after the decision. USCIS records reflect the Director issued only one RFE in connection with this petition. We acknowledge the Petitioner's confusion but conclude considering the Petitioner's timely filing of this appeal and correspondence that the mistaken update indicating issuance of a second RFE did not impact this appeal.

is uniformly described or coherently presented in a sufficient manner such that the substantial merit or national importance of the endeavor or endeavors could be evaluated. Moreover, the endeavors have transformed over the course of these proceedings, from initial filing through to response to the RFE. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998). And the change the Petitioner made are not benign adjustments of tasks and focus within the banking, finance, legal industry with a focus on equity, society, and governance. The Petitioner's RFE response constituted materially different endeavors as described above. The Petitioner's materially significant transformation of their proposed endeavors rendered their proposals ill-defined and amorphous. The Petitioner's reversals introduced ambiguity into their proposed endeavor which prevented analysis into substantial merit or national importance.

The *Dhanasar* framework cannot be applied to multiple proposed endeavors that have developed divergently over the course of the proceedings. A petitioner must identify the specific endeavor they propose to undertake. *See Matter of Dhanasar*, 26 I&N Dec. at 889. So, it is not possible to determine the substantial merit and national importance of an endeavor when a Petitioner cannot consistently articulate the nature of the endeavor.

### III. CONCLUSION

The record contains insufficient evidence to establish the Petitioner's proposed endeavor met the first prong of the *Dhanasar* analytical framework. Because the Petitioner has not established that the proposed endeavor has substantial merit or national importance, as required by the first *Dhanasar* prong, they are not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). So, we conclude the Petitioner has not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion. The petition will remain denied and the appeal is hereby dismissed.<sup>2</sup>

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The Petitioner's address changed during the pendency of their petition but the Petitioner "omitted [submission of] the change of address form to USCIS" prior to the adjudication in the manner required at that time. USCIS consequently mailed the decision to the Petitioner addressed to the mailing address they provided in the forms accompanying their petition. The Petitioner states they received the Director's decision on August 22, 2023, via email and the Petitioner timely filed this appeal on August 28, 2023. The Petitioner formally submitted their change of address on September 8, 2023. We recognize the sequence of events left the Petitioner with less than the 30 days (plus three days for mailing) afforded by the regulations to prepare and file an appeal after an adverse decision. Whilst this is regrettable it is ultimately harmless given, as described herein, the Petitioner did not establish eligibility at the time of filing and materially changed the proposed endeavor between the time the Petitioner filed the petition and submitted the response to the RFE.