



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

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

In Re: 28963266

Date: JAN. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager in the oil and gas industry, 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 record did not establish that the Petitioner's proposed endeavor was of national importance, that the Petitioner was well-positioned to advance the proposed endeavor, and, on balance, that it would be beneficial to the United States to waive the job offer and thus the permanent labor certification requirement¹. 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. 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

¹ The Director did conclude that the Petitioner met the underlying EB-2 classification and that his proposed endeavor had substantial merit.

If a petitioner demonstrates eligibility for the underlying 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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

A. EB-2 Classification

The Petitioner submitted evidence that he is qualified for the EB-2 classification as an advanced degree professional because he has the foreign equivalent to a bachelor’s degree and five years of progressive experience in the specialty. The Director concluded in the request for evidence (RFE) that the Petitioner qualified for the EB-2 classification based on this reasoning. The record contains evidence that the Petitioner obtained the degree “Bachelor in International Relations” in 2007 from [REDACTED] in Brazil. The record also includes a letter in support of his over five years of progressive experience as a project manager in the oil and gas industry; both internationally and in the United States. In addition, he submitted an academic evaluation to establish that his foreign degree is, “equivalent of a four-year Bachelor of Arts Degree in International Relations from an accredited U.S. college or university.” We conclude that the record shows by a preponderance of the evidence, the Petitioner qualifies for the underlying EB-2 classification as a professional with an advanced degree.

B. National Interest Waiver

1. Substantial Merit

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. *Id.* The Petitioner’s proposed endeavor is to continue to work in the oil and gas industry. The record contains numerous industry articles on the importance of this industry to the United States. The articles highlight how the oil and gas industry supports the economy and creates jobs. They also highlight how important it is for the oil and gas industry to continue to advance renewable energy and how the Petitioner would like to continue his work in this industry. We conclude the record establishes this endeavor has substantial merit.

² 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).

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar* at 889. The term “endeavor” is more specific than the general occupation; and we look to the specific work a petitioner will undertake within that occupation. In the initial petition, it is stated that the Petitioner’s proposed endeavor is to work as a “project manager . . . in the U.S. either as an employee or as a consultant” On appeal, the Petitioner asserts that he “methodically explained how he intends to continue working in the field as a project manager” in his personal statement and plan.

However, the record is inconsistent in whether the Petitioner’s specific proposed endeavor is to be a project manager as a consultant or an employee of a company, or if his goal is to continue with his current employment or seek an executive role. The Petitioner’s personal statement says, “[m]y immediate plans . . . include providing companies that seek my advice with top-notch consultation services” However, in the document titled, “Career progression and development strategy,” he states, “I have the goal of maintaining high-profile employment I strive to work for multinational companies . . . and continue to be a strong contributor to society by means of being an important asset in this labor market.” And then the Petitioner says, “the objective is to successfully perform my current professional roles in the Offshore Oil & Gas market with two important contractors in the industry, and gradually shift my career to become an executive or senior manager in a major renewables offshore energy-related company” With his proposed endeavor lacking specificity and being unclear, it is difficult to determine that his endeavor has national importance as these are different endeavors that would require separate evidence and analysis.

On appeal the Petitioner states, that the Director, “[m]istakenly separates Project Managers from this industry, implying that the latter’s importance is not connected to the former.” The Petitioner further states, “the Service’s attempt to separate the importance of professionals like [himself] from the U.S. Offshore Energy industry is fundamentally flawed, as the industry’s very existence and continued success are intrinsically linked to the work of individuals of his caliber.” The *Dhanasar* analytical framework requires the Petitioner to establish the national importance of “the specific proposed endeavor that the foreign national proposes to undertake,” rather than the national importance of the overall industry or field. *Id.* Much of the information in the record relates to aspects of the oil and gas industry but not specifically to his work in this area. Here, the Petitioner improperly relies upon the importance of the industry in establishing the national importance of his proposed endeavor.

In addition, the Petitioner included information on his extensive experience in the field, along with recommendation letters from many of his current and previous colleagues attesting to his experience, his work, and his management skills. The appeal states, “the Service[] failed to recognize how the effect of the Petitioner’s contributions is essential in understanding his impact on the national economy.” While we see the merit in his past work, and acknowledge his extensive experience, it does not further show the national importance of his proposed endeavor as these documents relate to the second prong of the *Dhanasar* framework, where we shift the focus from the proposed endeavor to the individual. *Dhanasar* at 890. While these letters show the contributions the Petitioner has made thus far in his career, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his future proposed endeavor.

Finally, the Director's decision concluded that the Petitioner did not establish the proposed endeavor would have, "[i]mplications beyond his employes, their employees or clients, and any entities or individuals he intends to work with, to impact the field, industry, or the economy more broadly at a level commensurate with national importance." The Petitioner addresses this on appeal by stating, "[W]hen the Service questions whether the work performed by the Petitioner has an impact on the industry extending beyond his employer, it overlooks the inherently interconnected nature of the Offshore Energy Industry." While this may be true, this again goes to the industry as a whole rather than the Petitioner's specific proposed endeavor. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "an undertaking may have national importance for example, because it has national or even global implications within a particular field such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar* at 889. The record does not elaborate on how the Petitioner's specific proposed endeavor will cause such effects, beyond operating within the field as a whole. Focusing on the importance of the industry itself and not the Petitioner's specific endeavor does not establish that the Petitioner's endeavor will have national or even global implications within a particular field or that it has significant potential to employ U.S. workers, as required by *Dhanasar*.

On appeal, the Petitioner asserts that the Director's decision was undue and violated the Administrative Procedure Act (APA), stating that the, "[v]ague and generic language in the Denial decision indicates that the service did not analyze the provided evidence but manifested an unjustified will to deny The Petitioner's case despite all the evidence." The Petitioner does not cite any specific section of the APA that they believe the Director violated; however, the Petitioner claims that the Director may not have performed a thorough initial case review before issuing the RFE and used boilerplate language. Further, regarding the national importance of the proposed endeavor, the Petitioner states, "[T]he Service's claims that the Petitioner did not provide enough evidence of national interest are arbitrary and burdened the Petitioner heavily. The Service has not provided clear criteria or guidelines for sufficient evidence."

In reviewing the RFE, we conclude that the Director cites and includes an analysis of the evidence and explains why additional evidence is needed in order to show the proposed endeavor's substantial merit and national importance. In addition, the Director provided information on the type of documentation that could be submitted to further a claim of substantial merit and national importance. The Director's decision also dedicates numerous pages to individual pieces of evidence and analyzes the entire record. In adjudicating petitions pursuant to the preponderance of the evidence standard, we examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Matter of Chawathe*, 25 I&N Dec. at 376 (quoting *Matter of EM-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The Director's decision reflects the completion of such an analysis by specifically addressing the contents of the Petitioner's documentation and we conclude that the Director followed the regulations under 8 C.F.R. §§ 103.2(b)(8) and 103.3(a)(1)(i).

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and

hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. See *Bagamasbad*, 429 U.S. at 25; see also *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.