



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

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

In Re: 31383917

Date: JUL. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a Mechanical Engineer, 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 the Petitioner’s eligibility for a national interest waiver at the time of filing. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner asserts eligibility and argues that the director applied an incorrect standard of proof in evaluating the evidence provided with his petition.

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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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.

Id.

II. ANALYSIS

At the time of filing, the Petitioner indicated his desire to remain in the United States and continue his work as a mechanical engineer and manager with [REDACTED]

At the time of filing, the Petitioner stated through counsel:

[The Petitioner] is a professional who occupies a crucial position in the company where he works. His field of expertise is the management of work teams and the optimization of production processes for products directly related to the automotive industry. He has vast experience in ensuring that plastic products are produced to specifications to meet the demands of various automobile manufactures, as well as in managing facilities to improve product quality and performance, increase business competitiveness in the market, reduce costs, and increase profitability.

This type of professional, as it is intended to demonstrate, is essential to the nation and is directly aligned with the national interest of the U.S. as [the Petitioner's] work is an element in strengthening the national automotive industry and facilitating a transition to mass adoption of electric cars.

The Petitioner further stated:

Many of these leading U.S. automotive plants have partnered with [REDACTED] as their supplier of injection-molded plastic products made on-demand to produce ever lighter, stronger, and more efficient cars, especially electric cars, which as it turns out, rely heavily on these attributes to be viable and affordable.

This is where the undeniable relevance of [the Petitioner] comes in, whose expertise in automotive engineering allows him to work closely as a liaison between [REDACTED] and automakers. [The Petitioner's] essential role in the company is managerial. However, the indispensability of his technique comes from his academic background in mechanical engineering, and his many years of experience dealing specifically with customers in the automotive industry, with a focus on customer relations.

The Petitioner provided details regarding his work history, information about the broader automotive industry, information regarding the obstacles in the U.S. transition to electric vehicles, and evidence

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

of his past contributions to the automotive industry. This evidence included reference letters from prior and current employers, presentations created by the Petitioner regarding new products, and news articles related to the automotive industry.

The Director issued a request for evidence seeking information related to the Petitioner's specific proposed endeavor, his position to complete that endeavor, and whether, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements.

In response, the Petitioner provided a new brief and a personal statement regarding the creation of a consulting company to provide mechanical engineering services to the U.S. automotive industry. In his personal statement provided in response to the RFE, the Petitioner describes his endeavor as follows:

With [redacted] I will seek to understand the complex manufacturing issues that clients face to identify, design, and implement correspondingly unique quality engineering solutions. It is worth highlighting that state-of-the-art technology and tools are employed to develop these solutions, leading to producing quality products.

[redacted] will provide quality engineering services for clients that include, but are not limited to, several automotive vehicle manufacturers and suppliers. Vehicle manufacturers are in the business of churning out multiple new automotive vehicle models each year. Each time their assembly lines must be reconfigured or retrofitted in preparation for new model production, defect elimination, and process improvement opportunities arise for [redacted] to offer its specialized quality engineering services. In this sense, [redacted] is choosing to locate its United States headquarters within a state where end-users have installed their manufacturing facilities.

Taking this into consideration, I prove to be a valuable asset to be added to the U.S. Automotive Industry since that, through my role as an entrepreneur, can leverage my skills and expertise to open a successful company in the country, focusing on areas where my experience aligns with the country's best interests.

The Director determined that the Petitioner had made material changes to the proposed endeavor in an effort to make an apparently deficient petition conform to an application's requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (comm'r 1998). The Director further determined that while the Petitioner had shown his education, professional experience, and recommendation letters from individuals in the automotive industry demonstrated knowledge of his field, he had not established that he was well positioned to be an entrepreneur or CEO operating his own business. Lastly, the Director determined that, on balance, the Petitioner had not established it was in the best interest of the United States to waive the job offer and labor certification requirements for EB-2 classification.

A. Substantial Merit and National Importance

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. In determining

whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889.

The Director determined that the Petitioner's endeavor to work as a mechanical engineer has substantial merit but that he did not establish national importance. On appeal, the Petitioner provides a brief asserting eligibility for a national interest waiver. The Petitioner contends that USCIS violated the Administrative Procedure Act (APA) but does not cite to a specific section of the APA that USCIS is meant to have violated. Rather, the Petitioner generally asserts that the Director used boilerplate templates and language to issue the denial and request for evidence. While the Director used common language regarding the requirements and acceptable evidence for NIW adjudication, it is clear from the denial that the Director gave individualized consideration to the Petitioner's initial proposed endeavor and his position to complete that endeavor by evaluating the submitted evidence.

The Petitioner also argues that his proposed endeavor is of national importance and that there was not a material change to the Application. Instead, the Petitioner argues that:

As a mechanical engineer and business manager, the Petitioner has consistently sought to leverage his expertise to drive innovation and enhance the operational efficiency of the Automotive industry, which is intrinsically tied to the role of a business owner and CEO.

The shift to a business owner and CEO does not materially change the nature of the Petitioner's work but rather extends the scope of his influence within the same industry.

The Petitioner's argument is unavailing. The transition from employee to business owner and consultant is a far greater change in circumstances than the Petitioner concedes. While the Petitioner's end objective remains the same, advancing the U.S. automotive industry, the means by which it is achieved is drastically different. Therefore, we agree with the Director that the Petitioner's new proposed endeavor to establish a consulting company in the United States is a material change to the initial petition. Because the new set of facts presented in response to the RFE constitute a material change to the petition, they cannot and do not establish eligibility, and we need not address them further. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Even if we were to consider the Petitioner's second proposed endeavor of establishing and running his own consultancy business, he has not provided sufficient detail to establish the economic, scientific, cultural, or societal implications of the endeavor. While the Petitioner provides substantial information regarding the automotive industry as a whole and the current interest in the transition from gas powered vehicles to electric, he has not demonstrated that his specific consultancy services would have a significant economic or scientific impact that would rise to the level of national importance. The Petitioner has not provided a business plan with revenue projections or staffing models. The Petitioner vaguely mentions "vehicle manufacturers and suppliers" and states that he "is choosing to locate" his business "within a state where end users have installed their manufacturing facilities." But he has not otherwise identified a base of operations, specific clients within the automotive industry, or the specific benefit his consulting services would have for those companies.

The Petitioner's broad statements regarding leveraging his work history into a new business that would advance the automotive industry is not sufficient to establish national importance. The first prong of the *Dhanasar* framework is forward looking, meaning we evaluate the potential future impact of the Petitioner's specific business, scientific, educational, or health related endeavor. In this context, the Petitioner's past record of success in his industry is immaterial to the business he intends to operate. Such considerations are better examined under the second prong of the *Dhanasar* framework regarding whether the Petitioner is well positioned to advance the proposed endeavor. Here, the Petitioner has not provided the evidence necessary to establish the potential economic impact of his endeavor or that the nebulous proposed consultancy services would, in fact, benefit a specific client or clients let alone the automotive industry as a whole and reach the level of national importance.

At the time of initial filing, the Petitioner did not assert that he would create and run his own business in the United States. Rather, he stated that he sought to continue his work as a mechanical engineer and manager for an established plastics company that he was working for at the time. As described above, the Petitioner's benefit to the relationships between [redacted] and its customers was an argument for his national importance. While his position withing [redacted] may have made him valuable to that company and their clients, the Petitioner has not shown that his future work for [redacted] [redacted] as a mechanical engineer and manager has the potential to impact the automotive industry as a whole and rise to the level of national importance.

Because the Petitioner has not established his proposed endeavor is of national importance, he is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the second and third *Dhanasar* prongs. *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).

ORDER: The appeal is dismissed.