



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

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

In Re: 30323046

Date: MAR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a power systems project manager, 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 Petitioner did not establish that he was eligible for the requested classification or that a waiver of the classification's job offer requirement, 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 dismiss the appeal because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining *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).

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. 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).

Once eligibility for the EB-2 visa classification is established, a petitioner 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. at 889, 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:

- 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 states that he has more than 10 years of experience as an electrical engineer specialized in power systems. His proposed endeavor is to be employed as a power systems project manager, operating and supervising energy projects in the United States.

With the initial filing the Petitioner submitted evidence of his education and experience, a cover letter describing his proposed endeavor and claimed eligibility for a national interest waiver, and a letter of interest from his proposed employer, [REDACTED] located in North Carolina. He also submitted recommendation and support letters, and industry reports and articles discussing the field of electrical engineering and identifying engineering as a national initiative in the United States.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the requested classification and for the national interest waiver. The Petitioner's response to the RFE includes a personal statement, an updated recommendation and experience letter, an updated resume and a letter verifying his employment with [REDACTED] North Carolina.

In his updated personal statement, the Petitioner states his proposed endeavor is to work with his employer, [REDACTED] to "provide comprehensive support in designing, developing, installing, maintaining, and repairing electrical equipment and systems."

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner did not establish that he was eligible for the requested EB-2 classification, as the record did not demonstrate that he possessed five years of full-time, progressive, post-baccalaureate experience. She further determined that the Petitioner had established that he is well-positioned to advance his proposed endeavor and that he submitted sufficient evidence to demonstrate that his proposed endeavor has

¹ See also *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).

substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director determined that the record did not demonstrate that the Petitioner's proposed endeavor would produce benefits rising to the level of national importance, trigger substantial positive economic impacts, or impact the industry more broadly. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director "erroneously applied a higher standard of proof, ... and has failed to consider the totality of the evidence provided in the adjudication of the case." In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he meets the EB-2 classification and merits a national interest waiver.

A. Member of Professions Holding an Advanced Degree

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of a foreign education equivalent to a U.S. baccalaureate degree and more than five years of post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). He does not make any claim to qualify as an individual with exceptional ability.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12).

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The record includes a diploma, titled *Titulo de Ingeniero*, and academic transcripts issued to the Petitioner by the [redacted]. The Petitioner also submitted an academic evaluation, demonstrating that he has a foreign equivalent of a U.S. bachelor's degree in electrical engineering awarded on April 9, 2010. The academic evaluation cites to the Electronic Database for Global Education (EDGE), which is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions

Officers (AACRAO).² USCIS considers EDGE to be a reliable source of information about foreign credentials equivalencies. According to EDGE, the Titulo de Ingeniero represents attainment of a level of education comparable to a bachelor's degree in the United States.

As required by 8 C.F.R. § 204.5(k)(3)(i)(B), the Petitioner must document his post-baccalaureate experience from April 9, 2010. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The Petitioner states that he was employed with [REDACTED] a mobile service provider in Honduras, from September 2010 to December 2021 in engineering roles with progressive responsibilities.

The Director determined that the record does not establish that the Petitioner possessed five years of progressive post-baccalaureate experience at the time the petition was filed. Specifically, the Director noted that a letter verifying the Petitioner's employment with [REDACTED] did not state that the positions he held were full-time employment.

After review of the entire record, we conclude that the Petitioner has established by a preponderance of the evidence that he possessed five years of progressive, post-baccalaureate experience, in accordance with 8 C.F.R. § 204.5(k)(3)(i), as of the date of filing. Therefore, the Petitioner has established that he possesses an advanced degree as required by 8 C.F.R. § 204.5(k)(2). This portion of the Director's decision is withdrawn.

B. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

As noted above, the Petitioner states that his proposed endeavor is to work as an electrical engineer in power systems in the United States. With the initial filing the Petitioner submitted a letter from [REDACTED] a North Carolina "design and build firm specializing in every facet of Outdoor Living." [REDACTED] states its interest in hiring the Petitioner as a "power systems project manager." The letter includes a description of the position stating that the primary job responsibility for this position is to "oversee installation of electrical systems and supply of electricity to porches,

² AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. *See* <http://www.aacrao.org/who-we-are>.

fences, and decks for residential and commercial structures.” The Director noted in the RFE that the letter did not establish that the Petitioner’s work for [REDACTED] would reach beyond the company or its customers.

In response to the RFE the Petitioner submitted a letter from [REDACTED] stating that the Petitioner began his employment with that company in April 2023 and has worked on two projects. The letter does not identify the Petitioner’s job title or job duties. Although the record includes a presentation summarizing two projects at [REDACTED] this presentation was prepared by the Petitioner and offers little probative value without independent, objective supporting evidence. The record does not include a description of future projects or any information about [REDACTED] or its business activity. The Petitioner has not demonstrated that his employment would sufficiently extend beyond his employer or its customers to impact the industry or field more broadly.

In *Dhanasar*, we noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” In his personal statement, the Petitioner asserts that his proposed endeavor will have a broad impact on societal welfare by improving the energy sector and infrastructure, as well as developing clean energy. However, the Petitioner has not supported these assertions with sufficient independent, objective evidence. The Petitioner’s statements are not specific or detailed enough for us to assess the potential prospective impact of it in the abstract, without considering the specific ways in which the Petitioner intends to implement this goal. The record does not include information about the Petitioner’s employer or future projects to support his assertions. The Petitioner does not explain how his employment with one company will have broader implications beyond the company’s clients, such as substantial positive economic effects, broad enhancements to societal welfare, or contributions to the advancement of a valuable technology.

The Petitioner submits articles and industry reports about the field of engineering, as well as an Executive Order demonstrating that science, technology, engineering and mathematics (STEM) is a national initiative.³ One article, titled “Power Systems Engineering – A Career for the Future,” discusses the types of career opportunities in the field and the job outlook. However, this article is dated 2014, nearly 10 years ago, and does not provide a current review of the industry or indicate a specific geographic location. A printout of a website for East Coast Power Systems discusses the “impact of electrical power systems on modern society,” but includes no author or date. The Petitioner does not explain the relevance of this information to his proposed endeavor. A printout of a presentation given by Mr. Charles M. Vest from the National Academy of Engineering discusses a need for more engineers in the United States. However, the presentation is dated 2011 and is not specific to the Petitioner’s field of endeavor in electrical engineering or power systems.

When determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to the engineering industry generally, rather than his specific proposed endeavor. Although we agree that STEM is important and may be the subject of national initiatives,

³ While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

we conclude that this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. As noted above, the Director determined that the Petitioner's proposed endeavor has substantial merit, and we agree. However, the question we are examining here is national importance. Even considering the articles and reports, collectively and in the totality of circumstances, the record contains insufficient information or evidence regarding the Petitioner's proposed endeavor to show broad potential implications demonstrating national importance.

The Petitioner also references an expert opinion prepared by Dr. [redacted] of [redacted] [redacted]. We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis Dr. [redacted] generally describes the Petitioner's experience and states that the Petitioner's "work as an electrical engineer has national importance, shaping a sustainable and efficient energy landscape domestically and internationally." However, Dr. [redacted] does not discuss the details of the Petitioner's specific proposed endeavor, including how his employment with a single business in the United States will have an international impact. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*

Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. His opinion is general in nature, emphasizing the Petitioner's qualifications and concluding that energy sustainability and efficiency is of national importance. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policy-manual> (emphasis added). Dr. [redacted] does not provide a substantive analysis of the Petitioner's specific proposed endeavor or suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

The Petitioner claims that the denial is deficient because the Director did not consider the entirety of the evidence in the record. While we agree that an adjudicator should consider the relevant evidence in the record, the Petitioner does not sufficiently support his claim that there was relevant evidence that the Director did not consider. The Petitioner does not cite to or describe which specific evidence was not given consideration. We note that the decision discusses each of the claimed pieces of evidence the Petitioner lists in his brief. Nevertheless, we address them again herein.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general importance of energy and power systems. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further

discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prong.⁴ See *INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has established by a preponderance of the evidence that he possesses an advanced degree as required by 8 C.F.R. § 204.5(k)(2) and this portion of the Director's decision is withdrawn. However, as the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the first and third *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.