



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

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

In Re: 34889793

Date: NOV. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, [REDACTED] seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary, a project controls engineer employee, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the best 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 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. *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,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

---

<sup>1</sup> *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- 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

The Beneficiary proposes to continue serving as a project controls engineer with [redacted] “responsible for initiating, processing, and tracking architects and general contractors’ assignments and contracts.” The Beneficiary currently fulfills these duties for [redacted] client, the [redacted] School District [redacted] in its capital improvement program, which includes “construction engineering projects to repair, rehabilitate, and build school facilities.”

In the denial decision, the Director determined the Beneficiary qualifies for the underlying EB-2 visa classification as an advanced degree professional. However, the Director found the Beneficiary did not establish eligibility for a national interest waiver as he did not demonstrate the national importance of the proposed endeavor 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.

### A. Substantial Merit and National Importance

The first *Dhanasar* 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. 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.” *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.

Although the Director found the proposed endeavor has substantial merit, the Director also determined the evidence did not establish its national importance. On appeal, the Petitioner contends the Director’s “conclusion the endeavor does not have national importance is arbitrary, capricious, [and] not supported by law or USCIS regulations or policy,” as well as overly restrictive in nature. We do not find error in the Director’s analysis of the evidence and concur that the evidence does not demonstrate the national importance of the proposed endeavor.

The Petitioner asserts the national importance of the endeavor is self-evident as [redacted] acts as a project manager for school districts’ capital improvement programs across the United States. As stated, the Beneficiary is a project controls engineer for [redacted] capital improvement program for [redacted]. The Petitioner contends the economic impact and significant potential for employment related to their work with [redacted] has been established. Specifically, the Petitioner asserts that since 2021, [redacted] work for [redacted] has included the delivery of 625 projects that, in total, generated over four billion dollars and

employment of thousands of individuals. Similarly, the Petitioner submitted a 2023 proposal from [ ] to [ ] stating the proposal demonstrates [ ] responsibility for the management of 18 subconsultant partners through its own 27 program leadership personnel and 95 support staff members. However, the economic and employment data proffered by the Petitioner relates to [ ] rather than the Beneficiary. The Petitioner does not claim the Beneficiary himself will employ U.S. workers or that his own position within [ ] has directly resulted in or will directly result in the hiring of U.S. workers. Further, though the Petitioner has asserted the economic impact of [ ] work at large, it does not assert, and the record does not otherwise reflect, the Beneficiary's own work as project controls engineer for [ ] would provide substantial economic benefits to the region or national economy more broadly at the requisite level.

The Petitioner asserts the work performed by [ ] for school districts across the U.S. is nationally important due to its "potential impact on security, society, and environment." In addition, the Petitioner asserts the Beneficiary's endeavor and work for [ ] will affect "students of public school systems across the U.S., who will benefit from advancements in the field of endeavor." While we acknowledge the importance of capital improvements for school districts across the nation, the importance of the proposed endeavor is not evaluated by the importance of the profession in which he proposes to engage, but rather the specific potential prospective impact of the specific endeavor. *Dhanasar* at 889-890. The purpose of the national interest waiver is not to ensure continued employment or facilitate U.S. job searches in industries that may have national significance. Rather, anyone seeking a waiver must show that the specific endeavor they propose to undertake has national importance. *Id.* Therefore, the general significance or potential impact of the industries in which [ ] works does not specifically inform the importance of the Beneficiary's own proposed work in the company, his endeavor.

The Petitioner asserts the proposed endeavor relates to a science, technology, engineering, or mathematics (STEM) field, which have been characterized as critical and emerging technologies. The Petitioner contends the proposed endeavor aims to advance the fields of construction engineering and management for public schools. Even if the Petitioner's endeavor lays within a STEM field, the evidence must still demonstrate this endeavor has national importance. *See generally* 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policymanual>. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.* Here, the Beneficiary's role in [ ] includes "responsib[ility] for initiating, processing, and tracking architects and general contractors' assignments and contracts." The Petitioner has not established that the Beneficiary's performance of his duties advance STEM technologies or research or has sufficiently broad implications for the field to demonstrate its national importance.

Overall, we acknowledge the Beneficiary's desire to continue his work with the Petitioner but the Petitioner has not established his work as a project controls engineer will further the industries' objectives in a nationally significant manner, have broader implication in the field, have significant potential to employ U.S. workers, or have substantial positive economic or societal effects. As such, the Petitioner

has not demonstrated the national importance of the proposed endeavor or the Beneficiary's eligibility for a discretionary national interest waiver.

#### B. Additional *Dhanasar* Prongs

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and reserve the Petitioner's arguments relating to the Director's adverse determinations of his eligibility under the additional prong of the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.