



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

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

In Re: 27421205

Date: AUG. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial and investment analyst, seeks second preference 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 EB-2 immigrant 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 qualified for the EB-2 classification as a member of the professions holding an advanced degree, but the Petitioner had not established 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. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In order to qualify as an individual of exceptional ability in the sciences, the arts, or business, a petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

The Petitioner’s proposed endeavor is to provide advisory and support services in implementing a standardized risk management system for small and medium businesses in the United States. Upon de novo review, we will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

A. Eligibility for EB-2 Classification

The Director indicated in the request for evidence (RFE) that in order to qualify as a member of the professions holding an advanced degree, the Petitioner must submit an academic evaluation to demonstrate that his foreign degrees are equivalent of the U.S. advanced degrees. The Petitioner submitted his diplomas and academic transcripts from the [redacted] University [redacted] with a degree of “Graduate Industrial Engineer” and the [redacted] University [redacted] with a degree of “Magister in Business Administration” in Colombia. However, the Petitioner did not submit a foreign equivalency evaluation in his RFE response and thus, did not establish that he possesses the equivalent of U.S. bachelor’s and master’s degrees.

Therefore, we withdraw the Director’s conclusion that the Petitioner met the EB-2 classification as an advanced degree professional. On remand, the Director should analyze the evidence in the record and

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

determine whether the Petitioner has established that he is qualified for the requested classification as a member of the professions holding an advanced degree pursuant to 8 C.F.R. § 204.5(k)(2).

The Director also indicated in the RFE that the Petitioner must submit documents to demonstrate that he meets three of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii) to qualify as an individual of exceptional ability. However, the Director did not make a finding on this issue. On remand, the Director should evaluate the record to find whether the Petitioner meets three of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) and consider the totality of the evidence in determining whether the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in his field, and thus qualifies as an individual of exceptional ability.

B. National Interest Waiver

The first prong of the *Dhanasar* analysis, which considers the substantial merit and national importance of the proposed endeavor, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director initially identified the Petitioner's endeavor as the financial and investment analyst and determined that the Petitioner's proposed endeavor was of substantial merit. The Petitioner described his proposed endeavor as implementing standardized risk management systems for small and medium sized entrepreneurs in the United States and explained the need for such endeavor, especially given the significant number of business closings during the pandemic. As the Petitioner provided sufficient details regarding this, we agree with the Director that his endeavor has substantial merit.

However, the Director's decision regarding the national importance of the Petitioner's proposed endeavor contains a critical error which must be addressed on remand. Specifically, in discussing the broader implications of the proposed endeavor, the Director stated that the Petitioner did not demonstrate his work "would have broader implications for the medical field." As the Petitioner's proposed endeavor does not involve the medical field, but the area of finance and risk management, on remand the Director should consider the evidence in the record (including the evidence submitted with the Petitioner's appeal) to determine whether this specific proposed endeavor is of national importance.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director concluded that the Petitioner is not well positioned to advance the proposed endeavor. However, the Director erroneously state that the Petitioner is "not well positioned to advance her proposed endeavor to be a nurse practitioner for an ill patient." The record shows that the Petitioner is a financial and investment analyst, not as a nursing practitioner. On remand, the Director should

apply the second prong factors in *Dhanasar* to the facts contained in the record to determine whether the Petitioner is well positioned to carry out the endeavor as a financial and investment analyst providing risk assessment to small and medium businesses.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

The Director stated that the Petitioner's endeavor "as a Financial Analyst for one client" would not produce the widespread benefits to the United States. However, the Petitioner stated that he will intervene and advise small and medium businesses, not just one client. On remand, the Director should re-evaluate the Petitioner's claims under the third prong of the *Dhanasar* framework in light of the revised analysis of the first two prongs per the discussion above.

C. Required Initial Evidence

The Director further determined that the Petitioner did not submit Form ETA-750B, Statement of Qualifications of Alien, pursuant to 8 C.F.R. § 204.5(k)(4)(ii). With the appeal, the Petitioner submits a completed and signed Form ETA-750B. As the Director did not have an opportunity to review this new evidence, we remand the matter back to the Director to consider it with the other evidence on record.

III. CONCLUSION

The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis. The Director should issue a new decision regarding the Petitioner's eligibility for the underlying EB-2 visa classification and for a national interest waiver with an analysis of the evidence to support each conclusion. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.