



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

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

In Re: 28803410

Date: DEC. 08, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks employment-based second preference (EB-2) immigrant classification as member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). He further requests a national interest waiver of the job offer requirement that is attached to this EB-2 classification. *See* section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that it would be in the national interest to grant a discretionary waiver of the job offer requirement. 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision lacks analysis and discussion of the evidence in the record and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. *See* section 203(b)(2)(B)(i) of the Act. The record supports the Director's determination that the Petitioner, who has the foreign equivalent of a master's degree in structural engineering, qualifies for EB-2 classification as a member of the professions possessing an advanced degree.¹

¹ We note that the Director did not address the Petitioner's eligibility for EB-2 classification in the final decision issued on April 20, 2023. However, in a request for evidence (RFE) issued on July 7, 2022, the Director advised the Petitioner that the initial evidence established his eligibility for EB-2 classification as an advanced degree professional. As such, the Director did not consider the Petitioner's alternate claim that he also qualifies for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

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 USCIS may, as matter of discretion, 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.

In evaluating the Petitioner’s eligibility for a national interest waiver, the Director addressed only the first prong of the *Dhanasar* framework, concluding that the Petitioner did not establish the substantial merit and national importance of his proposed endeavor. In reaching this conclusion, the Director observed that the Petitioner “did not submit a statement as to what his proposed endeavor would be” at the time of filing. We note that the initial evidence included a supporting letter from the Petitioner, and that the last six pages of this letter addressed his proposed endeavor to provide civil engineering consulting services through a Florida company that he had co-founded. The Director further found that the Petitioner’s response to a request for evidence (RFE) did not include “a detailed description of the proposed endeavor.” However, the RFE response included: a 13-page letter from the Petitioner in which he described the proposed endeavor and a 10-page letter from the Petitioner in which he addressed how his proposed endeavor has both substantial merit and national importance based on the factors set forth under the first prong of the *Dhanasar* framework. The Director’s determination that the Petitioner did not provide a detailed description of the proposed endeavor is not supported by the record and was not adequately explained.

The Director quoted a portion of one of the Petitioner’s letters submitted in response to the RFE but did not acknowledge or discuss any other evidence provided, which included, but was not limited to, a business plan for the Florida company that the Petitioner had co-founded, expert opinion letters, letters of interest from other professionals in the field, articles and media reports providing background on the Petitioner’s industry and occupation, and evidence intended to support the Petitioner’s claim that his endeavor will have substantial positive economic effects, will enhance societal welfare, and will impact a matter that is the subject of national government initiatives. These factors are relevant to a determination regarding the potential prospective impact of his work under the *Dhanasar* framework and should be weighed as part of the first prong analysis. In fact, the Director had specifically instructed the Petitioner to address such factors in his response to the RFE, but then failed to give those claims due consideration.

Further, the Director appeared to apply heightened standards that are outside the scope of the first prong of the analytical framework established in *Dhanasar*. In doing so, the Director overlooked or was dismissive of evidence relevant to the first prong analysis. For example, the Director appeared to require the Petitioner to demonstrate that “his proposed endeavor has already been utilized, has improved, or affected the development of . . . policies, industry, or has otherwise influenced [his] field as a whole.”

While the evidence of record may ultimately be insufficient to demonstrate the substantial merit and national importance of the proposed endeavor, the Director's determination that the Petitioner did not satisfy the first prong was conclusory, did not adequately address the evidence and arguments submitted, did not discuss most of the relevant factors set forth in *Dhanasar*, and therefore did not sufficiently explain the reasons for denial.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, for the reasons discussed, the Director's decision was insufficient and did not allow the Petitioner a meaningful opportunity to address any deficiencies on appeal with respect to the first prong of the *Dhanasar* framework. Further, the Director did not address any of the evidence submitted under *Dhanasar's* second and third prongs or reach a determination regarding the Petitioner's eligibility under those prongs.

Therefore, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether he has established eligibility under each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision. 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.