



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

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

In Re: 26399895

Date: MAY 04, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that 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 dismiss the appeal.

## 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.

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<sup>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</sup> *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be 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.<sup>2</sup>

## II. ANALYSIS

The Petitioner earned a master of science degree in management information systems from an accredited university in the United States. Therefore, he qualifies for the EB-2 classification as an advanced degree professional. The remaining issue to be determined is whether he has established eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner intends to continue to work in the United States as an electrical engineer. In response to a request for evidence (RFE), the Petitioner stated the following with regard to his proposed endeavor:

[The Petitioner's] presence in the United States as an electrical engineer and long-term project manager will benefit the national interest. Although he will be mostly based in Florida, he will bring his technical knowledge of circuit panel design to numerous utility companies around the country. He has a history of sharing his knowledge with colleagues and fellow professionals in the field and he works closely with the high-end industrial-scale hardware used to create electrical panel boards.

The companies that [the Petitioner] performs work for sell and maintain the electrical panels for end users. The panels channel the high-voltage electricity produced by the electrical plants and serve as the last line of defense against a short circuit, which causes a break in electric power to the end user and can damage the internal mechanisms of an end use product that is powered by electricity.... The panels designed and constructed by [the Petitioner] serve as protection against that common occurrence.

His presence elevates the proficiency of technical and commercial analysis of electrical panel engineering and design in the United States. His current employers, [redacted] help manage the energy processes for many industrial-scale end users. [The Petitioner's] ability to maintain technical creativity within the organization is key to the further successes of the companies and the industry at large.

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The Director determined that, while the Petitioner's endeavor has substantial merit, he did not demonstrate that it has national importance. The Petitioner initially submitted a document from [redacted] detailing the purpose, structure, and functionality of a new generation low voltage switchgear that he purports to have designed. The Petitioner also submitted letters from employers describing his technical contributions to their systems tools, his work designing panels, and his success managing various projects at several facilities, as well as attesting to his character and work ethic; we note that a petitioner's experience and skills are factors examined in the second prong of the *Dhanasar* framework. The Director determined that the evidence did not demonstrate that the Petitioner's proposed endeavor has national or global implications within a particular field or industry; the Director concluded that the Petitioner's assertions about the impact of his endeavor did not establish that his endeavor would have any prospective national implications, stating that the Petitioner cannot infer the impact of the endeavor without evidence. The Director added that in the same way the AAO found in *Matter of Dhanasar* that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, the Petitioner had not shown that his proposed endeavor stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly. *See Dhanasar*, 26 I&N Dec. at 893.

On appeal, the Petitioner submits a brief in which he states that the Director "has mistaken the facts of the underlying application, misinterpreted the applicable law, and used that misinterpretation as the basis for the denial of the application and should therefore issue a new decision." While the Petitioner does not elaborate on these assertions, he insists that the evidence of record establishes his eligibility for a national interest waiver in accordance with the preponderance of the evidence standard. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner emphasizes that the letters from the Petitioner's employers<sup>3</sup> demonstrate the national importance of his work:

[The Petitioner] has made a substantial contribution to critical infrastructure projects on an international scale. His work spans from the United States to Venezuela to Ghana. As one of the most talented electrical engineers in his field, [he] has been able to provide a substantial improvement in the daily lives of the thousands of users who have benefited from safe and efficient design and construction of electrical control panels that allow for functioning utilities in various large-scale infrastructure projects.

In determining national importance, 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 Dhanasar*, 26 I&N Dec. at 889. 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

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<sup>3</sup> The brief describes the Petitioner's work with [redacted] and the RFE response includes a letter from [redacted] confirming that the Petitioner began employment with the company in 2020. As the petition was filed in 2019, this letter cannot serve as evidence to establish the Petitioner's eligibility. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

The Petitioner has described his endeavor in terms of his successes with previous employers and the importance of his work in helping provide energy to certain building complexes and customers. The Petitioner has not submitted evidence to establish how his particular role in providing electrical engineering services for a company will have an impact of national importance in the field of energy systems maintenance or design solutions. While the letters from the Petitioner’s previous employers speak to his experience managing projects for customers and developing panel boards, they do not indicate how his continued employment in the field will affect the field on a national level. Also of importance is the fact that while his endeavor falls within a STEM field, that does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have both substantial merit and national importance in respect to the first prong of *Dhanasar*.<sup>4</sup>

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. While the Petitioner’s statements reflect his intention to continue his work as an electrical engineer, he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. As was stated in the Director’s decision, in *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his employer and its customers to impact the field of energy systems maintenance and design or the U.S. economy more broadly at a level commensurate with national importance. The record does not contain evidence of any benefits to the U.S. regional or national economy resulting from the Petitioner’s employment which would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework.<sup>5</sup>

### III. CONCLUSION

The Petitioner has not demonstrated the national importance of his proposed endeavor. The Petitioner has not established that his proposed endeavor has significant potential to employ U.S. workers, to impact an economically depressed region, or to otherwise offer substantial positive economic effects for the United States. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical

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<sup>4</sup> See generally 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policymanual>.

<sup>5</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); 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).

framework, he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

**ORDER:** The appeal is dismissed.