



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

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

In Re: 28808952

Date: NOV. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager in the construction industry, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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. 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 record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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).

"Profession" is defined as of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a United States baccalaureate degree or its foreign

equivalent is the minimum requirement for entry into the occupation.<sup>1</sup> 8 C.F.R. § 204.5(k)(3). Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates EB-2 eligibility, 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>2</sup> 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 initially claimed eligibility both as a member of the professions holding an advanced degree and as an individual of exceptional ability. The record establishes that he qualifies as a member of the professions holding an advanced degree. We need not consider his parallel claim of exceptional ability.

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

On appeal, the Petitioner asserts that the Director did not sufficiently explain the specific reasons for the denial. While the Director did not go into great detail regarding the grounds for denial, the Director did identify specific weaknesses in the Petitioner’s evidence relating to the proposed endeavor’s claimed national importance and whether the Petitioner is well-positioned to advance the proposed endeavor. The discussion of the third *Dhanasar* prong is minimal, but the discussion of the first two prongs is sufficient to warrant denial of the petition.

The Petitioner earned degrees in Colombia as a civil engineer in March 2002 and as a specialist in engineering system management in August 2004. He also earned a master of business administration degree in 2017 from a joint program between universities in Colombia and the United States. The Petitioner worked as a civil engineer and project manager for several employers, mostly in Colombia, from 2002 to 2021, when he entered the United States in July 2021 as a B-2 nonimmigrant visitor. He filed the present immigrant petition in January 2022. After he filed the petition and secured employment authorization, he began working as a project engineer for a construction company in Florida that focuses on transportation construction.

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<sup>1</sup> The listed occupations are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.

<sup>2</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 term “endeavor” is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *See generally* 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual>.

In his initial filing, the Petitioner provided few specific details about his proposed endeavor beyond his “plans to continue [h]is career by working as [a] Project Manager, planning and designing structures, such as private residences, office buildings, theaters, factories, highways, airports, water infrastructure, and other structural property.”

In a request for evidence (RFE), the Director stated that the Petitioner had not provided “specific insight as to what the petitioner intends to do as a Project Manager in the field of Civil Construction.” The Director requested “[a] detailed description of the proposed endeavor.” In response, the Petitioner stated in an affidavit that his “expertise in project management is focused on multimodal transport logistics.” Most of the Petitioner’s affidavit focused on his past experience rather than specific details about his proposed work in the United States. That experience included projects at mines and petroleum refineries.

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.

The Petitioner stated that his proposed endeavor has national importance because “the United States currently has a severe need for infrastructure renewal.” The Petitioner cited various statistics highlighting the need for improvements in areas such as bridges, airports, energy distribution, and the water supply, and showing that investment in such projects pays for itself in terms of contributions to the gross domestic product. These facts establish the overall importance of infrastructure projects, but they do not give national importance to the work individual project managers employed in that field. Rather, the importance of the work is collective. The Petitioner indicated that “fourteen million workers, or 11 percent of the total U.S. labor force, are currently employed in infrastructure-related sectors.”

The Petitioner submitted background evidence about the infrastructure crisis, but did not explain how his specific proposed endeavor would have broader implications beyond individual projects. The Petitioner also submitted statistics about occupations in the sciences, technology, engineering, and mathematics (STEM fields). USCIS policy guidance sets forth “specific evidentiary considerations relating to STEM degrees and fields,” but this guidance does not indicate that every proposed endeavor in a STEM field presumptively has national importance. The burden is on each petitioner to show that a given proposed endeavor has “sufficiently broad potential implications to demonstrate national importance.” *See generally* 6 USCIS Policy Manual, *supra*, at F.5(D)(2).

In the RFE, the Director requested “[a] detailed description of the proposed endeavor and why it is of national importance,” along with “[d]ocumentary evidence that supports the petitioner’s statements and establishes the endeavor’s national importance.” The Director stated that the evidence could establish national importance in various ways, such as showing that the proposed endeavor “[h]as national or even global implications within a particular field,” “[h]as significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area,” and “[w]ill broadly enhance societal welfare or cultural or artistic enrichment.” These elements derive from *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner submitted a letter from his employer in Florida, listing his responsibilities as a project engineer. The listed responsibilities appear to be typical for project engineer positions, such as managing costs, reviewing contracts, and coordinating with subcontractors. As an example of his work with his employer, the Petitioner submitted documentation from a June 2021 contract between his employer and the [REDACTED] to widen a four-mile section of State [REDACTED].

The Petitioner submitted a letter from a professor at [REDACTED] University.<sup>3</sup> The section of the letter dedicated to the first *Dhanasar* prong consists mostly of general information about the construction industry and the role of project managers within that industry. The professor stated that the Petitioner “is well-qualified to provide training and consultancy services as a Civil Engineer to help other professionals in the field,” but the Petitioner’s own affidavit describing his proposed endeavor does not mention education or consulting. The professor added that “[t]he proposed endeavor will broadly enhance societal welfare or cultural enrichment” through “the preservation of historical landmarks, community development, job creation, sustainable development, and disaster recovery” and affordable housing construction, but based these assertions only on the general statement that such work can be “incorporat[ed] . . . into construction projects.”

The professor stated that the Petitioner “can help and guide essential critical infrastructure workers” and “help organizations implement their business continuity and pandemic plans,” and therefore “the proposed endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects.” The professor did not elaborate on this point with specific regard to the Petitioner and his proposed endeavor. Rather, the statement appears to be a general assertion about construction project managers.

In sum, the professor attested to the importance of the construction industry, and stated that the Petitioner would benefit the United States by working in that industry, but the professor did not provide any specific details about how the proposed endeavor, in particular, has national importance. *Dhanasar* requires the Petitioner to establish the national importance of the proposed endeavor, rather than the national importance of the overall industry or field. Much of the information in the professor’s letter relates to aspects of the construction industry but not specifically to project management in “multimodal transport logistics,” which is the term the Petitioner used to describe his area of expertise.

The Director denied the petition, stating: “the petitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients to impact the industry or field

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<sup>3</sup> The professor is the associate dean of [REDACTED] College of Engineering and Business, but he claimed no specific expertise in civil engineering and infrastructure. His résumé instead describes a focus on mechanical and biomedical engineering.

more broadly.” The Director also concluded that the Petitioner had not provided documentary evidence to corroborate the claim that “the proposed endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects.”

On appeal, the Petitioner states that he had provided details about his duties with his current employer and “an Affidavit which detailed how his employment as a Project Manager . . . stands to impact matters of national importance.” The Petitioner asserts that the Director “did not articulate any deficiency with this evidence.” The burden of proof is on the Petitioner to establish eligibility, and the Petitioner, on appeal, does not explain how the affidavit and the job description establish the national importance of the proposed endeavor. As discussed above, the job description lists the Beneficiary’s duties and does not address the *Dhanasar* national interest test. The Petitioner’s own affidavit says little about the proposed endeavor other than that he intends to continue working as a project manager in the construction industry, with an emphasis on “multimodal transport logistics.”

In *Dhanasar*, we acknowledged the importance of STEM education, but concluded: “While STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly.” *Matter of Dhanasar*, 26 I&N Dec. at 893. The Director cited this observation in the denial notice. The Petitioner, on appeal, acknowledges this passage in the denial notice, but states that the submitted “evidence demonstrates that the specific activities that [the Petitioner] proposes to undertake has implications beyond any organization that he will serve given the urgent national need for improving U.S. civil infrastructure and his expertise in the management of large-scale civil engineering projects.”

The evidence in question, submitted in response to the RFE, consisted of information about infrastructure deterioration and proposed legislation to address it. These materials provide general information about the infrastructure crisis, but they do not discuss the Petitioner’s specific proposed endeavor, nor do they establish that the work of the Petitioner, or any individual project manager, would have an impact beyond the local benefit arising from individual projects. The Petitioner does not explain how “the urgent national need for improving U.S. civil infrastructure” gives his proposed endeavor “implications beyond any organization that he will serve.” As noted above, the only U.S. project that the Petitioner has documented involves widening a section of a state highway. The Petitioner has not explained how this project has broader implications for the infrastructure crisis. Assertions about the urgency of the need for the Petitioner’s services are a matter for the balancing test in the third prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 891.

Assertions about potential economic benefits derive from the overall economic impact of infrastructure projects, rather than from the specific contributions of project managers. The Petitioner has not demonstrated that a significant proportion of the economic benefits arising from infrastructure projects are attributable to project managers.

In light of the above conclusions, the Petitioner has not met his burden of proof to show that he satisfies the “national importance” element of the first prong of the *Dhanasar* national interest test. Detailed

discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.<sup>4</sup>

### III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).