



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

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

In Re: 28918447

Date: NOV. 27, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur and business consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Nebraska Service Center denied the petition, concluding that although the record demonstrated the Petitioner's eligibility for the requested EB-2 classification, she did not establish her eligibility for a national interest 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, which lacks discussion of the evidence in the record, is insufficient for review. 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 qualifies for EB-2 classification as a member of the professions possessing an advanced degree.

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>4</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.

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 record reflects that the Petitioner has been operating<sup>1</sup> and would continue to operate a New York-based business consulting company that provides a range of services to high-net-worth individuals and Central Asian companies seeking opportunities in the United States market.

Here, the Director's discussion of the first prong of the *Dhanasar* framework consists primarily of boilerplate language and a conclusory finding that the Petitioner did not meet her burden to demonstrate the national importance element of this prong. The Director acknowledged that the Petitioner submitted a "detailed business plan" but does not meaningfully address the plan's description of the proposed endeavor and its national importance, or other evidence that addresses the first prong of the *Dhanasar* framework. Nor does the decision address the Petitioner's specific claims and evidence as to how her proposed work will have substantial positive economic effects and national implications within her field, its potential to broadly enhance societal welfare, and its impact on a matter that a government entity has described as having national importance. These factors are relevant to a determination regarding the potential prospective impact of her work under the *Dhanasar* framework and should be weighed as part of the first prong analysis. Therefore, while the evidence of record may be insufficient to demonstrate the national importance of the proposed endeavor, the Director's determination that the Petitioner did not satisfy the first prong did not adequately address the evidence and arguments submitted, and therefore did not sufficiently explain the reasons for denial.

Rather, the Director appeared to disregard evidence relating to the proposed endeavor based on a determination that the record lacked "legal documentation" of the Petitioner's ownership interest in the New York company. This issue was not raised in the request for evidence, in which the Director expressly recognized the Petitioner as an entrepreneur in the consulting field. The Director also appeared to question the credibility of the proposed endeavor because the Petitioner submitted a 2020 business plan, noting that this evidence was inconsistent with her claim that the company had been established for several years. In addition, the Director observed that is "unclear why you need to be in the United States to achieve your proposed endeavor." This statement suggests a lack of understanding regarding the nature of the Petitioner's endeavor, which is underscored by the Director's reference to the Petitioner's field as "revenue management/pricing analysis" a description which is not in accord with the evidence of record.

In addressing whether the Petitioner is well-positioned to advance her proposed endeavor under *Dhanasar*'s second prong, the Director repeated several paragraphs from the first prong analysis, again questioning the Petitioner's ownership of the company and the date of the business plan. The Director did not address with specificity any evidence submitted in support of the second prong, which included

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<sup>1</sup> At the time of filing, the Petitioner was working in the United States as an E-2 nonimmigrant treaty investor.

the Petitioner's academic and professional credentials, evidence that she has received awards and media coverage, evidence related to a similar company she operated abroad, information about her U.S. company, and recommendation letters from clients, business contacts, and foreign dignitaries. Further, the Director concluded that the Petitioner did not demonstrate sufficient expertise or a record of success in her field because she did not show she "had made a significant contribution" to the field, demonstrate that her work "has served as an impetus for progress" in the field, or establish that she has "generated substantial positive discourse in the . . . industry." The Director appears to have applied heightened standards that are outside the scope of the second prong of the *Dhanasar* framework. In doing so, the Director overlooked or was dismissive of evidence relevant to the second prong analysis and did not sufficiently explain the reasons for denial.

As to the third prong of the *Dhanasar* analytical framework, the Director stated the law and relevant considerations in performing the third prong's balancing analysis. However, the Director did not sufficiently identify or discuss the evidence they weighed in balancing those considerations or meaningfully address the Petitioner's specific claims regarding her eligibility under the third prong.

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 did not sufficiently explain the reasons for denial.

Therefore, we will withdraw the Director's decision based on this deficiency. On remand, the Director should review the entire record, including additional evidence the Petitioner has provided on appeal, and determine whether she 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.