



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

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

In Re: 28467173

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial instrumentation specialist, seeks classification as a member of the professions holding an advanced degree or, in the alternative, 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, 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 qualified for classification as a member of the professions holding an advanced degree but did not establish 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest

waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to advance his career as an Industrial Instrumentation Specialist and by doing so, develop implement, and advise using his in-depth knowledge acquired through years of experience in the field." The Petitioner further stated that he will "make his services available to small and large businesses belonging to both the private and public sector in the United States." The Petitioner added that his "expert and unique skills will be crucial for the success of companies that need to improve quality, increase productivity and efficiency, automate productions processes, and reduce costs and losses in the United States."

In response to the Director's request for (RFE), the Petitioner stated his work will directly impact the instrumentation technical field and the U.S. economy since he will work with "electrical safety and industrial machinery equipment, maintenance of hydraulic equipment aimed at the preventive and corrective maintenance market in this sector, including reforms, reconditioning, and adjustments of industrial hydraulic tools, and electrical maintenance and programming of ABB, IRB, KRCT4 robots." The Petitioner further stated he will provide his services in instrumentation process and maintenance in the oil and gas industry. The Petitioner indicated his proposed endeavor will prove to be of national importance through the "availability of a vast number of sophisticated instruments which will correspondingly lead to improved product quality and decreased plant shutdown – which planned or unplanned, always have a significant impact on manufacturing schedules, consumer accessibility, inflated prices, and more." Further, the Petitioner stated that due to his high qualifications and extensive experience as an instrumentation technician, he will improve working conditions for American workers in the oil and gas industry since he will decrease work-related accidents. The Petitioner asserts that as an instrumentation technician, he will create the opportunity to raise the standard of living in the United States and the world since his work will help the manufacturing companies that make capital goods.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner copies sections of his response to the Director's RFE

into his appeal, essentially repeating the same arguments rejected by the Director. The Petitioner again summarizes his prior employment experience and qualifications, and he asserts that his past contributions and achievements demonstrate that he has made and continues to make contributions of significant impact. The Petitioner reiterates the general duties he has and will perform as an instrumentation technician. Since the appeal brief is for the most part identical to the response to the RFE, the Petitioner did not provide evidence to overcome the Director's concerns as stated in the denial.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

As described in the record, the proposed endeavor appears to benefit the Petitioner's employer and its clients; however, it does not appear to have broader implications or substantial positive economic effects indicative of national importance. See *Dhanasar*, 26 I&N Dec. at 889-90. Specifically, the Petitioner addresses maximizing a company's profit, providing his services in field instrumentation to ensure compliance with safety and environmental regulations, and generally help the manufacturing industry which in turn will improve the U.S. economy; however, the record does not establish with specific, probative information how the Petitioner's instrumentation technician endeavor would have broader implications beyond his employer's and its clients' profits, customer service, and work safety, etc. See *id.* Although the Petitioner asserts that his endeavor will enhance job creation and that the companies he provides services to will be better positioned to create job opportunities for U.S. employees, the record does not establish with probative information the types of jobs his endeavor may create, the number of workers his endeavor may cause to be employed, where those workers will work, and other details that may establish the endeavor has "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." See *id.* Additionally, although the Petitioner asserts that the proposed endeavor will assist with the manufacturing of capital goods and create the opportunity to raise the standard of living for the United States and the world, the Petitioner does not explain specifically how his endeavor will broadly affect the manufacturing industry and establish that the proposed endeavor would have broader implications indicative of national importance. See *id.*

On appeal, the Petitioner goes on to state that USCIS "has consistently stated that one way to estimate the prospective impact of one's work is by evaluating the individual's past achievements." We first note that he does not support this statement with citations to published decisions or references to policy documents. Second, the Petitioner's references to his prior employment experience, qualifications, and past contributions and achievements are misplaced in the context of the first *Dhanasar* prong. Although an individual's experience, qualifications, contributions, and achievements are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. See *id.* at 888-91. Relatedly, the Petitioner's references to the demand for manufacturing positions, and the benefits of hiring

technicians to increase the need for manufacturing jobs are misplaced. As discussed above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second and third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.