



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

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

In Re: 28962800

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, 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 record did not establish that the Petitioner qualifies for a 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## 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.

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 one of the occupations listed in section 101(a)(32) of the Act, 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)(2).

If a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.<sup>3</sup>

## II. ANALYSIS

On December 2, 2022, the Director issued a request for evidence (RFE)<sup>4</sup> discussing the Petitioner’s endeavor to provide legal consultancy services in the United States and how the evidence of record did not establish his eligibility for a national interest waiver under the *Dhanasar* framework. While the RFE did not explain whether or not the Petitioner qualifies as a member of the professions holding an advanced degree, the Director’s decision to deny the petition references the Petitioner’s eligibility for the EB-2 classification as follows:

You submitted evidence with Form I-140 which establishes the petitioner qualifies as a member of the professions holding an advanced degree. Therefore, USCIS does not need to evaluate whether the petitioner qualifies as an alien of exceptional ability.

The Director’s decision also states, “The petitioner indicated the endeavor is to work as a pilot and pilot instructor. The evidence establishes the endeavor has substantial merit.”

The decision goes on to evaluate the Petitioner’s endeavor as a pilot and pilot instructor under the three prongs of the *Dhanasar* framework. Based on an analysis of this endeavor, the Director determined that the Petitioner had not established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director “made an erroneous analysis of the Petitioner’s proposed endeavor, confusing it with that of another candidate seeking to classify as an alien holding an advanced degree or exceptional ability.” Upon de novo review, we conclude that a remand is warranted in this case because the Director’s decision does not

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<sup>1</sup> Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> We note that the Director’s decision incorrectly references November 18, 2022, as the date that the RFE was issued.

analyze the evidence in the record as it pertains to the Petitioner's proposed endeavor to provide legal consultancy services. In addition, the decision does not analyze whether or not the Petitioner qualifies for the EB-2 classification as an advanced degree professional.

The Director's exercise of discretion to waive the requirement of a job offer, and therefore a labor certification, requires adherence to all three of *Dhanasar*'s prongs as they pertain to the Petitioner's proposed endeavor. Concerning the first prong of the *Dhanasar* framework, the Director did not discuss either the substantial merit or the national importance of the Petitioner's endeavor to provide legal consultancy services through the operation of his own business in Florida. Also, in concluding that the Petitioner did not meet *Dhanasar*'s second or third prongs, the Director did not discuss any evidence specific to the record; the decision refers to evidence such as a pilot's license, which is not present in the record. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. 8 C.F.R. § 103.3(a)(i). Here, the decision does appear to relate to the case at hand.

In evaluating *Dhanasar*'s first prong on remand, the Director should analyze the evidence and conclude whether or not the Petitioner's endeavor to provide legal consultancy services in the United States has substantial merit. 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 Director should also analyze the evidence and conclude whether or not the Petitioner's endeavor to provide legal consultancy services has national importance. *Dhanasar* provided that an endeavor of national importance may have "national or even global implications within a particular field," or may have broader implications, such as the "significant potential to employ U.S. workers or...other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. The Director should evaluate the "potential prospective impact" of the Petitioner's work. *Id.* at 893. The Director should also consider, in accordance with the second prong of *Dhanasar*, whether the evidence of record demonstrates that the Petitioner is well positioned to advance his proposed endeavor. Finally, as to the third prong of the *Dhanasar* analytical framework, the Director should analyze the evidence and explain whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. On remand, the Director should review all of the evidence of record and explain the relative decisional weight given to each balancing factor. *See* 8 C.F.R. § 103.3(a)(i); *see also 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).

### III. CONCLUSION

For the foregoing reasons, we will withdraw the Director's decision and remand the matter for further consideration of the record, including claims submitted on appeal. On remand, the Director should determine whether the Petitioner qualifies for the EB-2 visa classification and meets each prong under the *Dhanasar* framework to establish his eligibility for a national interest waiver.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.