



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

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

In Re: 26375007

Date: OCT. 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, seeks classification as either an advanced degree professional or as an individual of exceptional ability. 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 although the Petitioner qualifies as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is 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 immigrant classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either an advanced degree professional or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 a 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.

## II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, based upon the Petitioner possessing the foreign equivalent of a bachelor's degree in electrical engineering followed by at least five years of progressive experience in electrical engineering. *See* 8 C.F.R. § 204.5(k)(2) (a U. S. bachelor's degree or the foreign equivalent followed by at least five years of progressive experience in the specialty is equivalent to a master's degree). Because the Director determined that the Petitioner qualifies as an advanced degree professional, the Director did not make a finding as to whether the Petitioner established that he is an individual of exceptional ability.

The Petitioner's proposed endeavor is to establish and operate a company in  South Carolina providing electrical engineering consulting services, specializing in automation and robotics particularly for the automotive industry. The Director determined that the Petitioner established only the substantial merit of the proposed endeavor. The issues on appeal are whether the Petitioner has established the proposed endeavor's national importance, whether he is well-positioned to advance it, and whether, on balance, a waiver of the job offer requirement would benefit the United States.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director concluded that the Petitioner did not offer sufficient evidence to demonstrate that the proposed endeavor stands to have implications beyond the company and its clientele to impact the field more broadly or to have substantial positive economic effects. The Director also noted that, although the Petitioner emphasizes his expertise and experience as evidence of the endeavor's national importance, the focus of the first *Dhanasar* prong is on the proposed endeavor itself and not the petitioner's background. Similarly, the Director noted that although the Petitioner discusses the importance of STEM (science, technology, engineering, and mathematics) professionals, in determining national importance, the focus is on the impact of what a petitioner intends to do rather than the occupational classification.

On appeal, the Petitioner submits a brief in which he restates the claims made in response to the Director's request for evidence (RFE). Indeed, the Petitioner's RFE response brief is essentially resubmitted on appeal. In the brief, the Petitioner discusses the management analyst and consulting occupation, the benefits of automation and robotics in the automotive industry, and the business plan's financial and job creation projections. However, the brief does not address the deficiencies that the Director found as to establishing the proposed endeavor's national importance.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

Upon review, we agree with the Director that the record does not establish the proposed endeavor's national importance. For example, we agree that, in determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. Additionally, we agree with the Director that evidence of the Petitioner's skills, knowledge, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Id.* at 890.

Although the Director noted these deficiencies in the decision, on appeal the Petitioner restates the claims that both his professional work experience and the importance of the consulting and automation industries establish the endeavor's national importance. The Petitioner does not address or attempt to overcome the findings of the Director that these claims relate to either the second *Dhanasar* prong or to the industry overall, rather than the specific proposed endeavor. Moreover, the Petitioner does not identify any specific legal or factual errors in the Director's finding that the Petitioner did not establish national importance.

On appeal, the Petitioner characterizes himself as a "rare professional" with "unparalleled experience." The appeal brief makes many impressive claims, such as the claim that the company will "start a chain reaction, positively impacting working conditions, employee safety, engagement, and time-effectiveness" leading to an improvement in the "quality of life" in the United States, and that the endeavor will "directly contribute to the betterment of the entire U.S. economy." However, these claims are not supported by the evidence in the record. The record includes the Petitioner's educational credentials, work experience letters, a professional plan statement, and a business plan. Although the evidence demonstrates that the Petitioner is an experienced electrical engineer, that he has worked in the automotive manufacturing industry, and that he intends to establish a consulting business, the evidence does not demonstrate that the potential prospective impact of this endeavor includes improving the entire U.S. economy or the general quality of life in the United States.

In *Dhanasar* we concluded that STEM teaching has substantial merit in relation to U.S. educational interests, but that the petitioner had not demonstrated that the activities of one individual STEM teacher would impact the education field more broadly. *Id.* at 893. The same is true here. The Petitioner has not established that the benefits of his proposed endeavor will extend beyond his own clients or employees to impact the electrical engineering, automotive, or robotics fields more broadly.

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 acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); 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 the applicant is otherwise ineligible).

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.