



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

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

In Re: 28404240

Date: SEP. 28, 2023

Appeal of Nebraska 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, 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 Petitioner demonstrated her eligibility for EB-2 classification as a member of the professions holding an advanced degree, she did not establish that a discretionary waiver of the classification's job offer requirement 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). 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 is insufficient for review. The decision contains several factual errors, lacks sufficient analysis and discussion of the evidence in the record, and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. 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 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 discretion⁴, 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 Director determined that the Petitioner established that her proposed endeavor's substantial merit, but not its national importance. The Director, noting that the Petitioner indicated her intent to continue working as a lawyer or legal consultant, observed that "an occupation and the general work performed in that occupation do not constitute an endeavor." The Director therefore concluded that "the evidence suggests that you have no proposed endeavor" and as a result, did not establish the Petitioner's future work in her field "would serve the national interest of the United States." The Director's determination that the record does not describe a proposed endeavor is contrary to the evidence submitted (which included, among other items, a professional plan), and contrary to the Director's own affirmative determination that the Petitioner established the substantial merit of her proposed endeavor. Further, this conclusory finding that the Petitioner has "no proposed endeavor" led to an insufficient analysis of the evidence submitted in support of the first prong of the *Dhanasar* framework.

For example, the Director acknowledged that the Petitioner submitted a professional plan but does not address the plan's description of her proposed endeavor and its national importance, or other evidence that addresses the first prong of the *Dhanasar* framework, which included an expert opinion letter. Nor does the decision address the Petitioner's specific claims 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. In fact, the Director had specifically instructed the Petitioner to address such factors in her response to a request for evidence, but then failed to give her claims due consideration.

The second prong of the *Dhanasar* framework shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

In concluding that the Petitioner is not well-positioned to advance her proposed endeavor, the Director provided some brief analysis of the submitted evidence. However, in several instances, the analysis references facts that do not appear in the record or pertain to the Petitioner's proposed endeavor. For example, the Director stated that "[t]he evidence lacked specific detail as to where and how you will drive your endeavor in the United States as an Education Expert. The record does not show that your business plan . . . has generated positive interest among relevant parties . . . , or otherwise reflects a

record of success as an education expert.” As emphasized by the Petitioner on appeal, she is not an education expert, did not submit a business plan, and did not otherwise indicate her intention to establish an education business.

Overall, the errors noted, particularly the reference to evidence that was submitted with an unrelated petition, and the lack of specific references to the evidence in the record, make it unclear whether the Director fully analyzed the evidence submitted by the Petitioner and based the decision solely on that evidence. 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, the Director’s decision did not sufficiently explain the reasons for denial.

Therefore, we will withdraw the Director’s decision. On remand, the Director should review the entire record, including the Petitioner’s appeal, in considering 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.