



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

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

In Re: 28455305

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot, seeks 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 is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

¹ *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 Petitioner, an airline pilot, proposes to work in the United States in the aviation field as a commercial pilot and flight instructor. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree based on his possession of the foreign equivalent of a U.S. master's degree in aeronautics. However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The Director's decision concluded that "substantial merit and national importance is met." However, the decision does not sufficiently explain the basis for this determination.

For example, with the petition, the Petitioner provided a statement indicating as follows:

I intend to continue using my expertise and knowledge working in the aviation field in the United States, where I can help fill the many and alarming number of pilot positions in the U.S., as well as train others in the field, whether experienced pilots, or new professionals entering the field. I have 23 years of experience in this field, proven experience in operating a wide variety of aircraft, and thousands of flight hours in my profession.

...

I intend to continue using my expertise and knowledge in the field of aviation by working as a pilot in the U.S. I plan to use my skill set to help curtail the shortage of pilots in the U.S. I already hold the airline transport pilot license from the Federal Aviation Authority (FAA), which will allow me to immediately fulfill my proposed endeavor in the U.S.

The Petitioner provided letters of support, an expert opinion letter, and articles and reports regarding the aviation industry in support of his eligibility under the first prong. The Director should analyze the evidence to determine whether the record sufficiently demonstrates the endeavor has substantial merit and national importance. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.² In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. An endeavor having significant potential on the broader

² See generally 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policymanual>.

implications for a field or region generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.³ The Director should review the record to determine whether the Petitioner has demonstrated his proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

In the second prong, the focus shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. 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.

For *Dhanasar's* second prong, the Director concluded that while the record shows the Petitioner "has gained skills and experience in his field of endeavor," it did not demonstrate that the Petitioner is well positioned to advance the proposed endeavor. However, the decision did not sufficiently explain the basis for the determination. The decision does not describe the evidence reviewed by the Director to make the determination, nor does the decision analyze any evidence submitted by the Petitioner. The decision states: "After consideration of the following non-exhaustive list of factors, among others, the record is insufficient to establish that the [Petitioner] is well positioned to advance the proposed endeavor." The Director, however, did not list the factors to which they referred, and simply concluded in the next sentence that the record did not establish that the Petitioner is well positioned to advance the proposed endeavor.

On appeal, the Petitioner argues that he demonstrated by a preponderance of the evidence that he is well positioned to advance the proposed endeavor. The Petitioner reiterates his qualifications and commitment to advance his proposed endeavor and asserts that the evidence of his "extensive experience, professional record, and expertise in the aviation industry," submitted initially and in response to the Director's request for evidence (RFE), is sufficient to satisfy this prong. The Director, however, did not discuss or acknowledge any of this evidence or explain why such evidence was insufficient.

An officer must fully explain the reasons for denying a petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denial to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision did not adequately address the evidence submitted with the petition or in response to the RFE. The Director should analyze the evidence to determine if the Petitioner is well positioned to advance the proposed endeavor.

³ *See id.*

Accordingly, we withdraw the Director's determination that the Petitioner does not meet the second prong of the *Dhanasar* framework. Any new determination by the Director must consider all of the evidence offered for prong two, including the Petitioner's academic record, certifications and trainings, expert opinion letter, letters of support and recommendation, and industry articles and reports. The Director should analyze the specific content of the record to determine if this documentation renders the Petitioner well positioned to advance the proposed endeavor. If the Director concludes that the Petitioner's documentation does not meet *Dhanasar's* second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As to the third prong of *Dhanasar*, the Director stated the law and the relevant considerations in performing the third prong's balancing analysis and concluded that the Petitioner "has not established 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." However, the Director did not discuss the evidence weighed in balancing those considerations or address the Petitioner's specific claims as to the third prong. Without a proper evaluation of the factors identified in *Dhanasar's* third prong, the Director's determination for this prong was in error. If the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

For the reasons outlined above, we are remanding the petition to the Director to determine if the Petitioner has established eligibility for a national interest waiver and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination. 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.