



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

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

In Re: 29224957

Date: JAN. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer, 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. The Director did not indicate whether the Petitioner qualifies for classification as a member of the professions holding an advanced degree. However, the Director concluded that the Petitioner had not established 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 a member of the professions holding an advanced degree 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 *Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, the Director did not indicate in the decision whether the Petitioner qualifies for classification as a member of the professions holding an advanced degree. However, in a prior request for evidence (RFE), the Director specifically concluded that "the [P]etitioner failed to demonstrate that he is eligible for classification as a professional holding an advanced degree as of the priority date." The Director further noted in the RFE, "If you are not an advanced degree professional, then you must establish that you are an alien of exceptional ability," as required by section 203(b)(2) of the Act." The Director did not address whether the record satisfies exceptional ability criteria in the alternative. Furthermore, the record does not clarify why the Director addressed whether the Petitioner may qualify for a national interest waiver if he was ineligible for second-preference classification, as indicated in the RFE.

Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. See *id.*; see also *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"); *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).

Initially, the Petitioner described the endeavor as a plan "to work in the United States as a mechanical engineer in the mechanical engineering industry." The Petitioner elaborated that he intends "to create a mechanical and electrical maintenance services company, equipment such as fillers, tanks, sealers, packaging machines, and air conditioning in mass consumption companies as well as the remodeling of commercial premises, offices, apartments, and electrical installations." He asserted that his endeavor:

has the potential to help companies by improving the production side of projects which contributes to areas of national interest, such as business growth, increased tax revenue and job creation and quality of life, safer public transit and infrastructure, protection and improvement of the environment, help advance government goals related to infrastructure/advancement in the field of STEM.

A professional plan submitted at the time of filing the Form I-140, Immigrant Petition for Alien Workers, provides generalized information regarding mechanical engineering and economic sectors that use mechanical engineering services. However, the professional plan omits details regarding the Petitioner's proposed endeavor, such as the location where he intends to create his mechanical and electrical maintenance services company, the location(s) in which the company would operate, the number of employees the Petitioner intends to hire, the duties those unspecified employees would perform, the wages the Petitioner's company would pay those employees, and other information that may inform whether the proposed endeavor may have national importance.

In response to the Director's RFE, the Petitioner resubmitted a copy of the professional plan, and he reiterated generalized information regarding mechanical engineering services. He described his qualifications to work as a mechanical engineer and the benefits of mechanical engineering projects in general; however, the RFE response did not elaborate on how the specific endeavor he proposes to undertake may have national importance.

The Director provided contradicting statements regarding whether the proposed endeavor may have national importance. The Director stated that "[the Petitioner] submitted sufficient evidence to establish that his proposed endeavor has substantial merit and is of national importance." However, the Director also concluded that "[t]he prospective potential impact of his proposed endeavor has not been shown to have broader implications to the overall field so as to establish its national importance." The Director added that, "[i]n this case, the [P]etitioner has not shown that his level of employment will have the potential to provide substantial positive economic effects to the region his business is located or to the nation." The Director specifically concluded, "the [P]etitioner has not shown that [the] proposed endeavor meets the 'national importance' element of the first prong of the *Dhanasar* framework."

On appeal, the Petitioner generally reasserts, in relevant part, that the "proposed [e]ndeavor has both substantial merit and national importance." However, the Petitioner does not elaborate on how the record establishes the proposed endeavor may have national importance.

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 *Matter of 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.

We have reviewed the record in its entirety and, although we acknowledge that the proposed endeavor of founding a mechanical services company has substantial merit in general, the record does not establish how the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. See *id.* As noted above, the professional plan omits details regarding the Petitioner's proposed endeavor, such as the location where he intends to create his mechanical and electrical maintenance services company, the location(s) in which the company would operate, the number of employees the Petitioner intends to hire, the duties those unspecified employees would perform, the wages the

Petitioner's company would pay those employees, and other information that may inform whether the proposed endeavor may have national importance. Although the Petitioner addressed his qualifications and prior experience, which are material to the second *Dhanasar* prong, neither the professional plan nor the remainder of the record establishes how the Petitioner's upstart mechanical and electrical maintenance services company may have national or even global implications within the field of mechanical engineering, or any other field, "such as those resulting from certain improved manufacturing processes or medical advances," contemplated by the first *Dhanasar* prong. *Id.* In turn, without probative evidence of details such as the location(s) in which the company would operate, the number of employees the Petitioner intends to hire, and the wages the Petitioner's company would pay those employees, the record does not establish how the proposed endeavor may have "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* Based on the foregoing, we withdraw the Director's statements to the extent they indicate the record contains sufficient evidence that the proposed endeavor may have national importance.

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. *See id.* We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

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.