



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

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

In Re: 19956443

Date: NOV. 7, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a political scientist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding 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.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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 an advanced degree professional 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.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, 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).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² 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).

considered must, taken together, indicate 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.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial cover letter stated:

I intend to apply my unique skills, superb academic training in political science and history, extensive professional experience as a diplomat, foreign policy analyst, and linguist to work with the leading U.S. based Non-governmental organization[s] (NGOs), think-tanks and academic centers, as well as establish cooperation with interested federal agencies to deepen U.S. – Central Asian strategic cooperation and expand U.S. political and economic presence in the Central Asian region

. . . .

. . . In my proposed endeavor I plan to use my extensive academic training, successful professional experience, research and analysis skills coupled with my linguistic abilities, to contribute to the deepening and expanding strategic U.S. – Central Asian cooperation. There are a number of ways, through which I plan to accomplish this objective, including working with the U.S. based NGOs, think-tank institutions and research centers, establishing cooperation with interested government agencies and contributing in general for a better understanding of the current socio-economic and political developments in Central Asia that are crucial to the U.S. national interests.

In response to the Director's request for evidence (RFE), the Petitioner claimed:

In order to successfully accomplish the goals, set forth in my proposed endeavor, I plan to use a twofold approach:

First, I will contribute as a Political Scientist, and particularly as a Policy Analyst and Researcher, by closely studying the events and processes taking place in the Central Asian region, and preparing analytical reports and articles that can be utilized by the interested parties, namely governmental agencies, think tanks, scholars, and business entities to form a better understanding of the risks and possibilities of engaging in Central Asian affairs. I also plan to collaborate with leading Washington D.C. research centers and think-tanks

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

through participation in discussions, round tables and seminars, preparation of reports that lay down the foundation in formulating the national security agenda and foreign policy objectives. I have already established good working relations with a number of think-tanks and journals, that I will discuss in greater detail while presenting supporting documentary evidence.

Second, I will utilize my professional experience as a consular officer, linguist, and international relations expert, to form an independent contracting agency/company to provide translation services and well as consulting on the immigration and citizenship matters pertaining to the Central Asian region. Here, I will also demonstrate that despite the global pandemic caused by Covid-19, resulting in loss of jobs, I have successfully established a New York based company [REDACTED], that has been expanding its client based and services, and more importantly creating new jobs and paying state and federal taxes.

On appeal, the Petitioner maintains that “one of the main tenets of [his] endeavor is to serve as a researcher and expert in Central Asian affairs, a region vital to U.S. national interests.” In light of the Director’s determination that the Petitioner demonstrated the proposed endeavor’s substantial merit but not its national importance, the record does not show that the Petitioner offered a specific, proposed endeavor consistent with *Dhanasar*, 26 I&N Dec. at 889.

At the outset, the Petitioner initially claimed that his proposed endeavor involved working with NGOs, think-tanks, and academic centers and establishing cooperation with interested federal agencies. The Petitioner claimed that he intended to create a new business [REDACTED], to provide translation services and to consult on immigration matters in response to the Director’s RFE. In fact, the Petitioner’s supporting evidence relating to this business reflects events occurring after the initial filing of the petition.⁴ Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Moreover, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Accordingly, we will not consider the Petitioner’s materially changed proposed endeavor of operating a translation and immigration consulting business.

Furthermore, on appeal, the Petitioner submits additional evidence “as an additional confirmation that [he] is continuing to successfully implement the proposed endeavors.” Notwithstanding that the evidence relates to events occurring after the initial filing of the petition, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based

⁴ The Petitioner filed his petition in February 2020; however, according to the submitted evidence, he initiated business filings with the New York Department of State and U.S. Internal Revenue Service in June 2020, his business plan is dated in November 2020, and the business’ bank statements are dated between December 2020 and March 2021.

on the record of proceedings” before the Director); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

As indicated above, the Petitioner broadly claimed that he intended “to work with the leading U.S. based Non-governmental organization[s] (NGOs), think-tanks and academic centers, as well as establish cooperation with interested federal agencies” by “closely studying the events and processes taking place in the Central Asian region, and preparing analytical reports and articles that can be utilized by the interested parties, namely governmental agencies, think tanks, scholars, and business entities to form a better understanding of the risks and possibilities of engaging in Central Asian affairs.” The Petitioner, however, did not explain what type of research, reports, or articles that he intended to pursue, did not identify which events or processes that he referenced, and did not elaborate and specify the entities that he asserted would employ him or with whom he would collaborate. Because he did not provide a specific endeavor, as required under *Dhanasar*, the Petitioner did not establish his eligibility under the first prong.

Notwithstanding the above, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his providing Central Asian affairs services rather than the national importance of Central Asian affairs or the wide range of fields or industries in which he intends to work. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

Furthermore, although the Petitioner has repeatedly emphasized his “extensive academic training, successful professional experience, research and analysis skills coupled with [his] linguistic abilities,” such personal and professional traits relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of his work. While he contended the importance of Central Asian affairs, the Petitioner has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Because he has not provided a specific, proposed endeavor, the Petitioner has not shown that such proposal stands to sufficiently extend beyond his potential or futuristic employers or clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner has not established that his endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation

attributable to his future work, the record does not show that the benefits to the U.S. regional or national economy resulting from his endeavor would reach the level of “substantial positive economic effects” as contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not show that he qualifies for the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁵

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in the decision of which is unnecessary to the results they reach”); 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 an applicant is otherwise ineligible).