



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

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

In Re: 19654629

Date: SEP. 27, 2022

**Motion on Administrative Appeals Office Decision**

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

The Petitioner, an aircraft marketing company, seeks second preference immigrant classification for the Beneficiary, an aircraft design engineer, 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 qualified for classification as a member of the professions holding an advanced degree but 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 Director affirmed the denial on a subsequent motion to reconsider and we dismissed a subsequent appeal. The matter is now before us on the Petitioner's combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the combined motions.

**I. LAW**

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). 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a “new fact” to have been previously unavailable or undiscoverable. Instead, “new facts” are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.”

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

## II. ANALYSIS

The Petitioner seeks to employ the Beneficiary as an aircraft design engineer converting passenger planes into air ambulances, as well as into freight planes. The Petitioner described its work on a project in [ ] retrofitting [ ] passenger planes for conversion to air ambulances. It also stated that it is beginning to work on passenger-to-freight conversions of planes to be leased to companies in [ ] for humanitarian and commercial operations, “[a]nd this is where the Beneficiary’s services may be of great value.”

The Director found that the Beneficiary qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of aviation, he concluded that the record does not establish that the Beneficiary’s endeavor has national importance. The Director further concluded that the record did not establish that the Beneficiary is well positioned to advance the proposed endeavor.

The Director granted the Petitioner’s subsequent motion to reconsider and affirmed the denial on the same grounds. In dismissing the Petitioner’s appeal, we concurred with the Director that the proposed endeavor has substantial merit. We also found that the Petitioner had not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. Therefore, we concluded that the Beneficiary was not eligible for a national interest waiver. We reserved our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs, as it was not necessary to reach these, based on not meeting the first prong.

On its combined motions, the Petitioner does not assert that our decision was based on an incorrect application of law or policy or that the decision was incorrect based on the evidence in the record. Therefore, the Petitioner has not met the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3), and we will dismiss the motion to reconsider.

With its motion to reopen, the Petitioner provides new evidence, including an updated expert opinion letter, letters from the Beneficiary's previous and current employers, and a supplemental statement from the Beneficiary. The new evidence describes the Beneficiary's previous work converting passenger planes using his unique design, which allows for lighter aircraft and more cargo space. The evidence asserts that the Beneficiary's design results in less fuel consumption, which further allows for lower fuel and transportation costs, as well as less carbon emissions.

To evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Beneficiary's work. Here, the evidence documents that the Beneficiary's prior work in aircraft conversion design has the potential for positive economic and ecological impacts, both nationally and globally. However, the evidence does not address how the specific proposed endeavor, working with the Petitioner to convert passenger aircraft to air ambulances in [ ] and freight planes for lease in [ ] will have the same positive impacts rising to the level of national importance. Rather, the evidence provides general information about the aviation industry and the Beneficiary's past accomplishments in the field. In determining national importance, the relevant question is not the importance of the overall industry, field, 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.

As we noted in our prior decision, the Petitioner has not demonstrated how the proposed endeavor has broader implications beyond the Petitioner's business. While the Beneficiary's previous work may have improved the passenger aircraft conversion process in a way that would result in national or global implications, these are the Beneficiary's past achievements in aircraft conversion design. As the Beneficiary notes in his personal statement, he currently leads the design team at a [ ] company where he developed his unique design. He states "the [design] prototype is currently being tested by the airline, and the results are extremely promising. If implemented, our design will result in millions of dollars in savings as each aircraft will be able to transport significantly more cargo, fully utilizing the additional cargo space created by the innovative design." It is unclear whether the Beneficiary or his current employer controls or owns the design technology. The Petitioner has also not established how, or even whether, the Beneficiary's design will be used in the proposed endeavor in a way significant enough to rise to the level of national importance.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. at 375; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The burden is on the Petitioner to demonstrate the potential impact of the Beneficiary's proposed endeavor. Here, the record does not explain the specific positive effects of the proposed endeavor, including whether it will result in employment of U.S. workers, will generate positive economic effects that go beyond an increase in sales and profit for the Petitioner, or will have an overall ecological impact. Although the Beneficiary states in his personal statement that his "skills and expertise would contribute to the U.S. economy both financially and ecologically and in terms of increasing competitiveness of American air cargo carriers," the Petitioner has not established how the proposed endeavor of two potential projects will result in these effects.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not

demonstrated eligibility for a national interest waiver. Further analysis of eligibility under the second and third prongs in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

The Petitioner's motion to reconsider is dismissed as it does not establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

The Petitioner's motion to reopen is dismissed as the new evidence on motion does not demonstrate that it meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, the Petitioner has not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.