



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

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

In Re: 24227508

Date: APR. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, 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 attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a 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). 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.

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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>1</sup> 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

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<sup>1</sup> *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).

- On balance, waiving the job offer requirement would benefit the United States.

The Director determined that the Petitioner was a member of the professions holding an advanced degree.<sup>2</sup> However, he stated, “You have not provided sufficient evidence to show that you can meet any of the [*Dhanasar*] prongs. Therefore, you are not eligible for, and do not merit, a national interest waiver as a matter of discretion.”

The Petitioner holds an undergraduate degree in civil engineering and he states that he has “over 22 years of experience working in the petrochemical, oil, industrial, commercial, and naval industries.” His work has included “project management, construction management, quality control, production processes, inspection, economic feasibility, resource management, business administration, strategic planning, and leadership.” He states that his construction projects include bridges, a penitentiary, city buildings, refinery buildings, and a shipyard platform. The Petitioner describes his proposed endeavor as follows:

My career plan in the United States is to work with American civil engineering companies for the Oil & Gas or Industrial sectors that require my specialized knowledge, acute experience, and expertise as a Civil Engineer. I intend to continue implementing valuable services in constructing and renovating structures and large-scale projects in the petrochemical, oil, industrial, commercial, and naval areas. These projects specifically include the construction and improvement of oil refineries.

With the initial filing the Petitioner submitted evidence of his education and experience, a professional plan and statement describing his proposed endeavor and claimed eligibility for a national interest waiver, an expert opinion letter, recommendation letters, industry reports on industrial manufacturing and infrastructure, and articles discussing the shortage and demand in the field of engineering broadly. Upon review, the Director concluded that the Petitioner had not demonstrated that his proposed endeavor has substantial merit or national importance, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director did not discuss whether the Petitioner is well-positioned to advance his proposed endeavor under the second *Dhanasar* prong.

On appeal, the Petitioner states that the Director “imposed novel substantive and evidentiary requirements beyond those set forth in the regulations.” He further states that the Director violated USCIS policy in denying the petition without first issuing a request for evidence and providing an opportunity to “present additional evidence and cure any questions raised by the adjudicating officer.” The Petitioner does not submit new evidence on appeal, but states that the Director “did not give due regard” to the evidence in the record and “ignored the fact that [he] is a high-skilled professional in a STEM [Science Engineering Technology and Mathematics] area, which is inherently nationally important.”

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<sup>2</sup> The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree in civil engineering earned in Brazil in 1998, followed by more than five years of progressive experience as a civil engineer. See 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner asserts that the Director imposed a “novel standard” of proof and did not consider the evidence objectively. However, the Petitioner does not identify the Director’s “novel standard” or describe how it differs from a preponderance of the evidence.

With respect to the Petitioner’s assertion that the Director did not fully review and consider all of the evidence in the record, we agree. In discussing whether the Petitioner’s proposed endeavor has substantial merit and national importance, the Director referenced the Petitioner’s professional plan and statement and articles discussing the shortage and demand in the field of engineering. The Director determined that the Petitioner did not demonstrate how his proposed endeavor will broadly impact the field of civil engineering or that it will have substantial positive economic effects to establish national importance. The Director stated, “although you highlight that there is an occupational shortage in the United States, such a shortage does not, by itself, establish that your work stands to impact the broader field or otherwise have implications rising to the level of national importance.” However, the Director did not discuss other evidence in the record, including the expert opinion letter, the Petitioner’s recommendation letters, and various industry reports.

The Director did not provide any analysis or discussion of whether the Petitioner is well-positioned to advance his proposed endeavor. And in analyzing the third prong of *Dhanasar* - whether on balance, waiving the job offer requirement would benefit the United States - the Director made several references to evidence that the Petitioner did not submit. However, of the evidence in the record, he only discussed the shortage and demand articles in his analysis. The Director listed factors that may be considered in performing a balancing analysis, but he did not discuss the evidence he weighed in balancing those considerations, nor address the Petitioner’s specific claims, if any, as to the third prong.

An officer must fully explain the reasons for denying a visa petition to allow the 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)(i); *see also 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). Therefore, we will withdraw the Director’s decision based on this deficiency. On remand, the Director should review and fully analyze the entire record in considering whether the Petitioner has established eligibility under each of the three prongs of the *Dhanasar* framework.

Accordingly, the matter will be remanded to the Director to determine whether 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.