U.S. Citizenship and Immigration Services

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

In Re: 26375096

Date: APR. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a production engineer in the oil and gas industry, 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 immigrant 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 the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. In addition, the Director concluded that the Petitioner did not establish eligibility for a national interest waiver. 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 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. 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.
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> (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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.[1] *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

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. *Dhanasar,* 26 I&N Dec. at 889.

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,

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dept. 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).

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. *Id.* at 890.

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) 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. *Id.* at 890-91.

## II. ANALYSIS

We will first address the threshold requirement that the Petitioner must qualify for classification under Section 203(b)(2)(B)(i) of the Act, as a member of the professions holding an advanced degree.

The Director determined that while the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in industrial engineering, but he did not establish that he possesses the requisite five years of progressive post-baccalaureate experience in the specialty.[3] On appeal, the Petitioner claims that he is an advanced degree professional based on his bachelor's degree in production engineering and fifteen years of professional experience. Considering the evidence in the record in totality, we conclude the Petitioner has established, more likely than not, that he possessed the foreign degree equivalent of a bachelor's degree, and at least five years of progressive post-baccalaureate experience in the specialty at the time of filing of the petition and is therefore eligible for the EB-2 classification in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B).

We now turn to the Petitioner's assertions that we erred in our determination that he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director concluded that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar* framework. We agree with the Director's decision. Regarding national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake" and look to evidence documenting the "potential prospective impact" of his work. *See Dhanasar*, 26 I&N Dec. at 889. Initially, the Petitioner stated that his proposed endeavor is "doing high-end [research and development] work in the field of Production Engineering and large-scale Business Analytics [sic] in the oil and gas industry." But the Petitioner does not directly state what his future work would involve, other than that he will work in the field of production engineering in the oil and gas industry.

[3] Specifically, the Director concluded the submitted employment letters did not comport with the regulation at 8 C.F.R. § 204.5(g)(1), which provides in pertinent part that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received."

On appeal, the Petitioner submits two articles on energy crisis, one from the perspective of the ongoing Ukraine war and the other regarding death tolls caused by the Great Texas Freeze, purportedly demonstrating the overall value and importance of the oil and gas industry. However, the relevant question is the importance of the Petitioner's specific proposed endeavor and not the importance of the industry or profession in which the individual will work. *Id.* The record similarly contains documents showing the value of the oil and gas industry but lacks specific evidence of benefits and advances his proposed endeavor will make in the oil and gas industry. The Petitioner must demonstrate the national importance of continuing to serve in his role in the oil and gas industry, rather than the national importance of the industry overall.

In *Dhanasar,* we 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. Here, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake 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 attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar. Id.*

Much of the evidence contained in the record shows the Petitioner's past accomplishments with his former employers, such as evidence of the research paper he co-authored in 2007 with the [redacted] team, post job summary he created for his employer's client in 2003, and presentations and studies he facilitated as a [redacted] employee, and reference letters that speak about the Petitioner's experiences with his former employers. The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. We find that the record is insufficient in describing the Petitioner's specific future endeavor and its broad impact on the oil and gas industry and dwells only on the Petitioner's past work and achievements.

In addition, the Petitioner argues on appeal that we did not properly analyze his case in comparison to the standard set by *Dhanasar.* The Petitioner asserts that we are legally required to compare the impact of his work with that of Dr. Dhanasar and submits as evidence Dr. Dhanasar's current research citations to minimize Dr. Dhanasar's impact in the field. The Petitioner misunderstands the nature of precedent decisions when he asserts that approvals are required for any petitioner with more impact than Dr. Dhanasar. While we agree that *Dhanasar* is a precedent decision, the Petitioner cited no legal authority for a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors. *Dhanasar* establishes an analytical framework to examine national interest

waiver cases, but it does not mandate, or even suggest, that a side-by-side comparison of individual petitioners and endeavors is required. [4]

Accordingly, we find the record does not establish the Petitioner's proposed work is of national importance. Because the Petitioner has not met the first prong of the *Dhanasar*'s analytical framework, we decline to reach whether he meets the remainder of the second and third prongs under the *Dhanasar* framework. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

## III. CONCLUSION

The documentation in the record does not establish a specific proposed endeavor, nor does it establish the national importance of it, as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the remaining prongs outlined in *Dhanasar* would serve no meaningful purpose. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.

[4] The Petitioner also claims that his endeavor meets the "national in scope" standard in *NYSDOT* case. *NYSDOT*, 22 I&N Dec.at 215. However, when issuing *Dhanasar*, we vacated *NYSDOT*. *Dhanasar*, 26 I&N Dec. at 888. As this petition was filed subsequent to *Dhanasar*, the Petitioner must establish eligibility for a national interest waiver under the framework set forth in that decision.