



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

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

In Re: 26423101

Date: APR. 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a corporate finance manager, 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 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 he 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.

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.

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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *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).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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.

With respect to his proposed endeavor, the Petitioner initially indicated that he intends to continue working “as Corporate Finance Manager for [REDACTED] . . . or for another major infrastructure company in the U.S. for the indefinite future.” He stated that he plans “to oversee, analyze and manage the finances of transportation infrastructure projects such as highways, roadways, bridges and dams, from inception through financial closing and final construction of the project.” The Petitioner further explained:

On a daily basis, [the Petitioner] will continue to review and analyze financial risk and benefit during the construction of transportation infrastructure projects to ensure financial control, improve processes, train staff, manage banking relations, and ensure their financial viability by anticipating any problem. He will also analyze cost of manpower, materials, etc., perform credit and cost analyses and budgeting to determine whether prospective projects are viable. During the construction stage, he will work with banks to put in place financial tools such as Supply Chain Finance or Sale of Receivables programs to help improve working capital, and Stand By Letters of Credit to improve collateralization.

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor. In response, the Petitioner indicated that he was promoted to Chief Financial Officer (CFO) at [REDACTED] in August 2021 and that his proposed endeavor is to continue to work in his new position.² He stated that his undertaking involves managing “the finances and administration of infrastructure projects such as highways, roadways, bridges and dams throughout the US, from inception through financial closing and final construction.”

A. Substantial Merit and National Importance of the Proposed Endeavor

With regard to the first prong of *Dhanasar*, the Director concluded that “[t]his criterion has been met.” However, the decision does not identify the evidence or sufficiently explain the basis for this determination. The Director should analyze the evidence to determine if the Petitioner’s proposed

² As the Petitioner’s August 2021 promotion to CFO happened after the filing of the petition, and therefore would not establish his eligibility at the time of filing, it does not assist him in establishing that he meets the requirements set forth in the *Dhanasar* framework. The petition in this matter was filed in March 2021, and the Petitioner has the burden of proof to establish eligibility for the requested benefit at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts”).

endeavor has national or global implications in the financial management field, significant potential to employ U.S. workers, or other substantial positive economic effects for the nation. If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar*'s first prong, his decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

As evidence for *Dhanasar*'s second prong, the Petitioner presented his academic records and letters from employers and colleagues discussing his work experience and infrastructure projects. The Director determined that that Petitioner did not meet this prong because "[t]he evidence submitted does not support the statements that the Petitioner will be able to make a significant contribution. The evidence of record does not show that you have made a significant contribution as of the time of filing this petition or that you will now be able to make a significant contribution in the U.S." While a petitioner's record of success and progress towards achieving their endeavor are relevant factors for consideration under prong two of the *Dhanasar* framework, there is no requirement that a petitioner demonstrate "a significant contribution" in order to satisfy this prong. The Director's statements on this issue are therefore withdrawn. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Dhanasar*, 26 I&N Dec. at 890.

On appeal, the Petitioner argues that the Director's analyses are "unsubstantiated and conclusory" and that the Director did not "address any of the legal arguments or documents submitted." We agree with the Petitioner's assertion that his arguments and evidence for prong two were not given due consideration in the Director's decision. An officer must fully explain the reasons for denying a visa petition in order 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)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denial to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision did not adequately address the evidence submitted with the petition or in response to the RFE.

Accordingly, we withdraw the Director's determination that the Petitioner does not meet the second prong of the *Dhanasar* framework. Any new determination by the Director must consider all of the evidence offered for prong two.³ If the Director concludes that the Petitioner's documentation does not meet *Dhanasar*'s second prong, his decision should discuss the insufficiencies in his evidence and adequately explain the reasons for ineligibility.

³ The Director should analyze the specific content of the letters from Petitioner's employers and colleagues and evaluate his academic credentials to determine if this documentation renders him well positioned to advance the proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

The third prong requires a 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, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Dhanasar*, 26 I&N Dec. at 890-91.

In denying the petition, the Director concluded the Petitioner had not shown that it would be impractical for an employer to obtain a labor certification, that there is an urgency in his contributions sufficient to warrant forgoing the labor certification process, that his work will directly lead to the creation of jobs, or that the United States will benefit from his contributions. Regarding these conclusions, the Director's decision did not specifically address the Petitioner's arguments and evidence submitted at time of initial filing and in response to the RFE. The Director also stated that because the Petitioner had not satisfied both the first and second prongs of the *Dhanasar* framework, he therefore did not meet prong three.⁴ We agree with the Petitioner's contentions on appeal that the Director's decision did not discuss specific evidence or address his legal arguments for *Dhanasar*'s third prong. Without a proper evaluation of the factors identified in *Dhanasar*'s third prong, the Director's determination for this prong was in error. If the Director concludes that the Petitioner's documentation does not meet this prong, his decision should address all of the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

We are therefore remanding the petition for the Director to properly apply all three prongs of the *Dhanasar* analytical framework to determine if 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.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

⁴ This statement is not consistent with the Director's determination on page 4 of the denial decision indicating that the Petitioner had met the requirements of *Dhanasar*'s first prong.