



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

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

In Re: 26247234

Date: APR. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a logistics operations manager, seeks employment-based second preference (EB-2) immigrant classification as both a member of the professions holding an advanced degree and an individual of exceptional ability, 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 Petitioner did not establish that he is an individual of exceptional ability and eligible for, or otherwise merits, 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To qualify for a national interest waiver, a petitioner must first show eligibility 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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.¹ If a petitioner satisfies the initial criteria, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

Once a petitioner demonstrates EB-2 eligibility, 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 discretion², 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
- On balance, waiving the job offer requirement would benefit the United States.

As noted above, the Petitioner claims to meet the underlying classification as both an individual of exceptional ability and as an advanced degree professional. Here, the Director did not address the Petitioner’s eligibility as an advanced degree professional.³ While the Petitioner has established that he holds the foreign equivalent of a U.S. bachelor’s degree, the Director should determine whether he has submitted sufficient evidence that he has the required five years of progressive experience in the specialty and, thus, qualifies for the underlying EB-2 classification.

Regarding the Petitioner’s eligibility for a national interest waiver, he must identify “the specific endeavor that [he] proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) he is well positioned to advance it.

According to the Petitioner’s initial filing on July 14, 2021, he “seeks employment in the field of supply chain management.” The Director explained in the notice of intent to deny (NOID) that the Petitioner did not sufficiently describe his proposed endeavor. As part of the evidence provided in response, the Petitioner submitted a personal statement indicating he would “provid[e] consulting services . . . in the area of operations [and] supply chain management in the dairy and agricultural industries,” a “draft business plan” for a limited liability company which will “offer[] solutions for [b]usiness value chains, logistics, supply chain, [and] procurement,” an employment verification letter which states that he has held the position of operations manager since January 2021 for a company in Venezuela, and two job offer letters.

The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). Further, the purpose of an NOID is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1),(8), and (12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). If significant, material changes are made to the initial request

² 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).

³ An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor’s degree. A United States bachelor’s degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master’s degree. 8 C.F.R. § 204.5(k)(2).

for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

While we agree with the ultimate conclusion that the Petitioner has not established that he qualifies for a national interest waiver, the Director should determine whether the evidence submitted in response to the NOID 1) clarified or provided more specificity to the proposed endeavor as initially described, or 2) presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. We note, for example, that the Petitioner made no mention of starting his own consulting company in the original petition and, in fact, specifically stated that he would be "seek[ing] employment."

The Director should also consider whether the Petitioner provided consistent information to determine what the proposed endeavor actually is in order to accurately analyze it under the first and second prongs of the *Dhanasar* analysis. Although the Petitioner provided a draft business plan in response to the NOID, he also submitted a letter dated July 2022 confirming his employment as an operations manager since January 2021 for a company in Venezuela and two job offer letters indicating a start date "upon approval of immigrant visa."

If the Director concludes that the Petitioner did not change his proposed endeavor and has sufficiently and consistently described it, then he should conduct a thorough analysis to determine whether the Petitioner meets any of the prongs under *Dhanasar*.

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