



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

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

In Re: 28023749

Date: AUG 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established 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. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

- 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 job offer requirement would benefit the United States.

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).

II. ANALYSIS

The Director concluded the Petitioner qualifies for the EB-2 visa classification as an individual of exceptional ability. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong relates to the substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director determined in her denial that the Petitioner's endeavor has substantial merit, but the Petitioner did not submit sufficient probative evidence about his endeavor to satisfy the national importance requirement. *Matter of Chawathe*, 25 I&N Dec. at 376.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner submitted "professional plans" reflecting his intention to offer his services as an electrical engineer specializing in oil rig drilling operations to U.S. employers, either as an employee or as an independent consultant. He provided evidence, such as his academic credentials, training certificates and licenses, his resume, as well as letters from colleagues and employers to establish that he is trained and experienced in performing services in this occupation. The record also contains a variety of articles and reports about his occupation specifically and the oil industry generally, including a report prepared for the American Petroleum Institute, *Impacts of the Oil and Natural Gas Industry on the US Economy in 2019*, which "explores the economic impact of the oil and natural gas industry in the United States," a 2021 article, *Drilling Operations*, posted on sciencedirect.com which discusses "offshore process safety" procedures, a U.S. Library of Congress research guide on the oil and gas industry, and a training guide, *Introduction to Petroleum and Natural Gas Engineering*, which provides an overview of various aspects of the Petitioner's occupation.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance under *Dhanasar*'s first prong, we look to evidence documenting the "potential prospective impact" of his work. *Dhanasar* at 889. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor. While we may not discuss every document submitted in support of the petition, we have reviewed and considered each one.

In a letter submitted at the time of filing, the Petitioner described his work experience and training gained as an electrical engineer working in the oil and gas drilling industry. Regarding his prospective plans for the endeavor, he indicates:

The Petitioner's endeavor in the United States is to continue to work in his area of expertise, providing crucial advice to oil and gas companies regarding the right tools and methodologies to effectively execute drilling operations. [He] will share his knowledge with respect to the practices and procedures required for promoting and maintaining safe and healthy working conditions for personnel performing drilling activities. There is no doubt that Petitioner's expert advice will benefit the oil and gas industry in the United States, since the oil and gas exploration is a critical function that often takes place in dangerous environments and has a significant impact on the environment.

The Director issued a request for evidence (RFE), advising, among other things, that the Petitioner had not shown that his proposed endeavor has implications beyond the Petitioner's proposed employers and their business partners, customers and clients that would impact the industry or field more broadly. The Director, citing to *Dhanasar*, further emphasized that the evidence the Petitioner provided did not specifically describe the potential impacts of his work, such as its broader implications to his field, a significant potential to create jobs for U.S. workers, or its substantial positive economic effects. Accordingly, the Director asked the Petitioner to provide a detailed description of the proposed endeavor and why it is of national importance and to support his statements with documentary evidence. However, based on our review of the record, we conclude that the Petitioner did not sufficiently address this aspect in his response to the RFE.

The Petitioner's response to the RFE included his updated professional plan, letters of references from colleagues and former employers, an opinion letter, material from an internet job site listing electrical engineering positions in the U.S., as well as additional articles and reports about the oil and gas industry. In discussing the national importance of his proposed endeavor, the Petitioner emphasized the services he will offer to U.S. companies, such as providing "consulting and training services to electrical professionals and electricity supervisors as an [i]ndependent [c]onsultant," and that he will work with U.S. employers to "plan, train, and coordinate with the right tools and methodologies to effectively perform drilling and offshore operations." He also mentioned that he will "provide mentoring and support related to sustainable drilling techniques to reduce sea pollution and help U.S. companies implement preventative maintenance plans. . ." He contended that his undertaking has "significant national importance because it will impact the oil and gas industry and the energy industry as a whole – both of which are driving forces for the national economy but are in high need for services."

In denying the petition, the Director explained that the submitted evidence did not demonstrate the endeavor's potential prospective impact by showing it will have broader implications within the oil or gas industry, significant potential to employ U.S. workers, or that it will result in substantial positive economic effects. She noted that the Petitioner provided inconsistent information regarding how he would deliver services within his endeavor, noting that the Petitioner provided copies of job announcements posted by U.S. employers, but also has indicated in the RFE response that he would operate as an independent consultant to businesses within his industry. The Director acknowledged the Petitioner's evidence about the national importance of the oil and gas industry but concluded that the Petitioner had not submitted sufficient evidence showing how his plans to work as an electrical engineer would have an impact that reaches the level of national importance contemplated in *Dhanasar*.

On appeal, the Petitioner maintains that the evidence submitted in response to the RFE sufficiently explained how his proposed endeavor will have national implications within his field, substantial positive economic effects, and how it will broadly enhance societal welfare in a manner consistent with national importance. The Petitioner contends that the Director did not adequately address the submitted evidence and erred by concluding that he did not establish the national importance of the proposed endeavor.

As noted, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement under the *Dhanasar* framework, we look to evidence documenting the "potential

prospective impact” of his work. The Petitioner asserts that he will continue his career working as an electrical engineer, where he has several decades of work experience. We acknowledge that a U.S. oil company or similar employer that hires or consults with him to provide services may operate more safely and efficiently, benefits that may extend beyond the individual organization. However, the record does not provide adequate support for the Petitioner’s claim that, by accepting a position as an electrical engineer, he “will broadly impact the field” and that the impacts from his work will significantly benefit the oil and gas industry and the nation.

Here, the Petitioner did not provide sufficient supporting evidence to establish a strong connection between the proposed endeavor which involves providing electrical engineering services and substantial economic benefits (such as job creation or tax revenues) on a level commensurate with national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar*, 26 I&N Dec at 893. Similarly, the proposed endeavor here may very well positively impact the businesses that engage the Petitioner for his services, but the evidence does not suggest that the Petitioner’s services will be available on a level that has potential national implications in the electrical engineering occupation or the oil and gas industry.

The Petitioner has similarly stressed the national importance of his work by highlighting the fact that oil and gas drilling explorations are a major economic driver for the U.S. economy. Regarding national importance, however, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Dhanasar, supra*. The Petitioner must demonstrate the national importance of his continued career as an electrical engineer in the oil and gas industry, rather than the national importance of the industry overall. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation 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 services would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

We acknowledge the Petitioner’s recommendation and employment letters which discuss his training, and work experience and positively comment on his intention to continue working in the same field. For instance, in the letter from H-R- who indicates that he worked closely with the Petitioner in an offshore drilling unit, H-R- describes the Petitioner as having a “pioneering spirit [who] provided greater safety, productivity, and profitability for the unit, standing out among others. One of his most exceptional abilities is to create innovative and pioneering techniques, bringing solutions in record time and overcoming complex challenges faced on the high seas. . .” He asserts the Petitioner “will benefit the economy of the United States of America with his ability to achieve extraordinary results.”

Likewise, J-C- writes in his letter that he was the Petitioner’s general manager while the Petitioner was employed as an electricity supervisor. J-C- states that the Petitioner’s “technical knowledge and ability to coordinate teams in Jack-Ups and Semi-Submersible Units were fundamental to the success of the operations.” J-C- alleges that “[g]iven his high qualification, this makes [the Petitioner] a unique and essential professional in his field, so the economy of the United States of America should benefit from his skills and extraordinary results.”

The authors of these letters praise the Petitioner's skills, abilities and performance as an electrical engineer. While important, the Petitioner's expertise acquired through his employment relates 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 the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. While we do not doubt that the Petitioner was and is a valued and high-performing employee, the letters do not sufficiently illustrate how the Petitioner's specific endeavor in the United States will have national implications.

The Petitioner also suggests on appeal that the Director did not give sufficient weight to an "unbiased" opinion letter that was previously submitted in support of the petition. In the opinion letter from associate professor P-, the professor emphasized that "revenues for the oil and gas drilling sector came to \$3 trillion in 2020," and that recent media reports reflect that the industry has "a shortage of skilled engineers. While there may be an ongoing demand in the industry for persons who possess the Petitioner's skills, training, and experience, neither the Petitioner nor the professor sufficiently explain how the Petitioner's work as an electrical engineer would meaningfully impact this demand or alleviate any shortage of workers.

We also observe that much of the content of the professor's opinion letter lacks relevance because he discusses the importance of the Petitioner's industry and occupation rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the *Dhanasar* framework. The professor opines that the Petitioner's "expertise is essential to ensure companies in the oil and gas industry and associated industries [have] high quality operational safety measurements. He will use his knowledge and experience to help his clients find the right tools and methodologies to effectively execute processes." Though the professor avers the "United States would greatly benefit from the expertise and skills of an experienced professional in the petroleum and gas segment such as [the Petitioner]," he does not sufficiently identify, analyze or discuss the nature of the specific work the Petitioner will perform within his prospective endeavor in the United States. Simply stating that the Petitioner's work will support an important industry is not sufficient to meet the "national importance" requirement under the *Dhanasar* framework.

It is the Petitioner's burden to prove by a preponderance of evidence that he is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* Without more, the professor's letter does little to support the Petitioner's contention that his proposed endeavor is of national importance. Importantly, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *See Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'"). For the sake of brevity, we will not discuss other deficiencies in the professor's opinion letter.

For these reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we determine that he has not demonstrated his eligibility for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the

Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.