



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

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

In Re: 28786345

Date: DEC. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an assistant professor and researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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.

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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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 determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree, and the record supports that determination. However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The Director’s decision concluded that “substantial merit and national importance is met.” However, the decision does not sufficiently explain the basis for this determination.

The Petitioner stated that she intends to work in the United States as an assistant professor and researcher in the field of renewable energy. Noting the potential for power failures as a result of aging transmission lines, she indicated that she intends “to address and find solutions to these issues,” and stated that she is “engaged in search of further advancement in the field of clean renewable energy and microgrids which could serve the national interest of the United States of America. . . .” The Petitioner provided copies of her academic credentials, personal statements, letters of recommendation, and articles and reports pertaining to microgrid and renewable energy research in support of her eligibility under the first prong.

The Director should analyze the evidence to determine whether the record sufficiently demonstrates the endeavor has substantial merit and national importance. The endeavor’s merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.² In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. An endeavor having significant potential on the broader implications for a field or region generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.³ The Director should review the record to determine whether the Petitioner has demonstrated her proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner’s documentation does not meet the substantial merit or national importance requirements of *Dhanasar*’s first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

² See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policymanual>.

³ See *id.*

B. Well Positioned to Advance the Proposed Endeavor

In the second prong, the focus shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. 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. *Id.* at 890.

For *Dhanasar's* second prong, the Director concluded that although the Petitioner had “gained skills and experiences in her field of endeavor,” the evidence was insufficient to demonstrate that she is well positioned to advance the proposed endeavor. However, the decision did not sufficiently explain the basis for this determination. The decision does not describe the evidence reviewed by the Director to make the determination, nor does the decision analyze any evidence submitted by the Petitioner. The decision states: “After consideration of the following non-exhaustive list of factors, among others, the record is insufficient to establish that the [Petitioner] is well positioned to advance the proposed endeavor.” The Director, however, did not list the factors to which they referred, and simply concluded in the next sentence that the record did not establish that the Petitioner is well positioned to advance the proposed endeavor.

On appeal, the Petitioner asserts that she submitted abundant evidence to demonstrate that she is well positioned to advance her proposed endeavor. The Petitioner reiterates her qualifications and commitment to advance her endeavor, and points specifically to evidence including her curriculum vitae, academic record, employment history, research projects, certifications, research grants, recognition for achievements, and memberships. The Petitioner further highlights letters of recommendation and her citation history, and concludes that all of this evidence is sufficient to satisfy this prong. The Director, however, did not discuss or acknowledge any of this evidence or explain why such evidence was insufficient.

Collectively considering the evidence submitted prior to the Director’s decision, we find that the Petitioner’s evidence was not given due consideration. 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). The Director’s decision did not adequately address the evidence submitted with the petition or in response to the request for evidence in support of the second prong. The Director should analyze the specific content of the record to determine if the Petitioner’s evidence renders her well positioned to advance the proposed endeavor. If the Director concludes that the Petitioner’s documentation does not meet *Dhanasar's* second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

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

As to the third prong of *Dhanasar*, the Director stated the law and the relevant considerations in performing the third prong’s balancing analysis and concluded that the Petitioner “has not established 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.” However, the Director did not discuss the evidence weighed in

balancing those considerations or address the Petitioner's specific claims as to the 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, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

For the reasons outlined above, we are remanding the petition to the Director to determine if 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.