



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

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

In Re: 29049595

Date: DEC. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 was well-positioned to advance the endeavor or 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 substantial merit and national importance of the proposed endeavor. The Director also did not evaluate whether the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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.

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

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.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In order to qualify as an individual of exceptional ability in the sciences, the arts, or business, 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. If a petitioner does so, 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.

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. *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:

- 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.

II. ANALYSIS

A. Eligibility for EB-2 Classification

As a threshold matter, we note that the Director did not determine whether the Petitioner qualifies for the EB-2 classification, either as an advanced degree professional or an individual of exceptional ability. On remand, the Director should review a copy of the Petitioner’s diploma from the [redacted] with a degree in public accounting and the academic evaluation stating that he has the foreign equivalent of a U.S. bachelor’s degree in accounting, along with experience letters from past employers to determine whether he qualifies as an advanced degree professional.

In addition, although the Petitioner submitted documents to support that he qualifies as an individual of exceptional ability, the Director did not make a finding on this issue. On remand, the Director should evaluate the record to find whether the Petitioner meets three of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) and consider the totality of the evidence in determining whether the Petitioner

¹ 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).

possesses a degree of expertise significantly above that ordinarily encountered in his field, and thus qualifies as an individual of exceptional ability.

B. National Interest Waiver

With the initial filing, the Petitioner stated that his endeavor is to work as an accountant, “providing financial accounting, managerial accounting, credit analysis, credit management, financial management, business management, operations management, and project management services.” In response to the Director’s request for evidence (RFE), the Petitioner submitted an updated personal plan stating that his endeavor is “to offer financial management services to U.S.-based businesses, mainly focusing on helping them in the area of in finances, accounting, and budgeting.”

1. Substantial Merit and National Importance

Our exercise of discretion to waive the requirement of a job offer, and therefore a labor certification, requires adherence to all three of the *Dhanasar*’s prongs. Here, the Director did not include a determination on substantial merit and national importance of the Petitioner’s endeavor under the first prong of the *Dhanasar* framework. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. 8 C.F.R. § 103.3(a)(i). Therefore, we will remand the matter for entry of a new decision consistent with the following analysis.

In evaluating the *Dhanasar*’s first prong on remand, the Director should first analyze the evidence and conclude whether the Petitioner’s endeavor has substantial merit. 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 Director should also analyze the evidence and conclude whether the Petitioner’s endeavor has national importance. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. Therefore, the Director should consider if the Petitioner’s proposed endeavor has national or global implications in the field of financial services, 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.

2. Well Positioned to Advance the Proposed Endeavor

As evidence for *Dhanasar*’s second prong, the Petitioner presented his academic records, updated personal plan, letters from employers and colleagues discussing his work experience, and an expert opinion letter. The Petitioner asserts on appeal that the Director erred by requiring evidence of how

his work served “as an impetus for progress in the industry” or has “a significant record or indispensable role of success in the field,” as these are not requirements found in the second prong of the *Dhanasar*’s analytical framework. 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, we agree that there is no requirement that a petitioner demonstrate being “an impetus for progress” or having an “indispensable role of success” in the field 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. *Id.* at 890.

On remand, the Director should apply the second prong factors in *Dhanasar* to the facts contained in the record to determine whether the Petitioner is well positioned to carry out the endeavor of providing financial management services to businesses. As education is merely one factor among many that contribute to the second prong analysis,² the Director should evaluate whether the recommendation letters and the Petitioner’s past experiences demonstrate a level of success that would render him well positioned. The Director should also consider other evidence in the record, or the lack thereof, that demonstrate any progress towards achieving his endeavor, or interests from potential employers or clients.

In addition, the Director did not adequately address the Petitioner’s updated personal plan and expert opinion letter submitted in response to RFE. The Director should articulate whether such evidence shows or fails to show that he is well positioned to advance his endeavor.

III. CONCLUSION

For the foregoing reasons, we will withdraw the Director’s decision and remand the matter for further consideration of the record, including the claims and documentation submitted on appeal, and entry of a new decision to determine whether the Petitioner meets each prong 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.

² In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891.