



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

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

In Re: 26408023

Date: JUL. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an oil and gas mechanical engineer, seeks classification as a member of the professions holding an advanced degree. 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. Section 203(b)(2)(i) of the Act. 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 as an advanced degree professional, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.¹ 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.

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 discretion², grant a national interest waiver if the petitioner demonstrates that:

¹ 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).

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).

- 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.

The Director determined the record did not establish eligibility under the second and third prongs of the *Dhanasar* framework. On appeal, the Petitioner contends there was a lack of review of the record, explaining that the request for evidence (RFE) “was extremely brief, lacking in substantive evidence review, and very generic...” and the decision was not only “similarly brief and generic,” but also did not “substantively address any of the evidence submitted with the RFE response.” We agree. While we conduct de novo review, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review.

Although the Director determined that “[t]he first prong, substantial merit and national importance, is met,” the decision does not sufficiently explain the basis for this determination. For example, with the petition, the Petitioner provided a statement indicating that he proposes to:

[D]evelop direct assessments and corrosion and deposition models in order to predict when and where petroleum pipelines may fail due to threats from internal corrosion for sweet and sour service, external corrosion, environmentally assisted cracking, mechanical deformation, and cyclic impact.

The Petitioner provided letters from professors and reports regarding the oil industry in support of 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.³ In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of 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.⁴ The Director should review the record to determine whether the Petitioner has demonstrated his 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.

For *Dhanasar*’s second prong, the Director concluded that while the record shows the Petitioner “has gained skills and experience,” it did not demonstrate that the Petitioner is well positioned to advance the proposed endeavor. However, the decision did not sufficiently describe the evidence reviewed or provide a meaningful explanation of its shortcomings. For example, although the Petitioner claims to have received funding for his research, the provided evidence only includes the first and last pages of the funding documents and lacks critical information such as the recipient’s name. While we agree

³ See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policymanual>.

⁴ See generally 6 USCIS Policy Manual at F.5(D)(1).

that the submitted documentation is insufficient to meet this prong, the Director should analyze all of the relevant evidence and adequately explain its deficiencies.

As to the third prong, the Director did not discuss the evidence weighed or address the Petitioner's specific claims. Without a proper evaluation of the factors identified in *Dhanasar*, the Director's determination for this prong was insufficient.

While we may agree with the Director's ultimate conclusion that the Petitioner has not established that a waiver of the required job offer would be in the national interest, an officer must fully explain the reasons for denying a petition in order to allow a 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). Because the Director's decision did not adequately address the evidence submitted with the petition or in response to the RFE, we will remand the matter. The Director should issue a new decision, containing specific findings that will afford the Petitioner the opportunity to present a meaningful appeal. The Director may request any additional evidence considered pertinent to the new decision.

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