



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

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

In Re: 25462972

Date: MAR. 23, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in criminology and criminal justice, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement would be in the national interest. The Petitioner filed a subsequent motion to reopen the matter, which the Director granted. Upon reopening, the Director again denied the petition on the same grounds. 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.

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 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.² The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

In addition to the Petitioner's academic background in law enforcement, criminal justice and criminology, he has more than 15 years of experience in criminal justice. While pursuing undergraduate and graduate degrees he worked in intelligence and security for a foreign government for more than a decade. He earned his private investigator diploma in 2017 and has been employed with the [REDACTED] as a corrections treatment officer since 2018. He states that he is a researcher who has published books and articles in international journals and has worked on research projects for the World Health Organization.

The Petitioner stated in the initial filing that he intended to continue his employment with the [REDACTED] [REDACTED] as a corrections treatment officer and supervisor. In this position he states that he will continue to assist in the formulation and implementation of policy and procedures, direct the corrections treatment officers and related staff, and work with mental health and medical professional to coordinate and provide therapeutic and rehabilitation programs for inpatient prisoners.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Director noted that in his initial filing the Petitioner had not established that the proposed endeavor had substantial merit and was of national importance, that he was well positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

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).

² The record demonstrates that the Petitioner holds the equivalent of a U.S. doctor of philosophy degree in criminology earned in 2016 in Nigeria. Prior to that, the Petitioner was awarded the U.S. equivalent of a bachelor's degree in sociology in 2009 and a master's degree in law enforcement and criminal justice in 2011, both in Nigeria.

The Petitioner's response to the RFE includes a proposed project plan, recommendation letters, financial documents, and evidence of his publications and citations to his work. In his proposed project plan, the Petitioner states that his goal is to perform research in U.S. criminal justice policy to support reform in the treatment of mental illness in the U.S. prison system. He identified some of his core goals as:

- Reviewing the treatment of incarcerated individuals with mental illness to identify inconsistencies;
- Analyzing "criminogenic behavior" to treat "manipulation tendencies in program implementation;"
- Advocating for "exit-treatment programming or communicated based treatment" to reduce recidivism for individuals with mental illness who are released from incarceration; and
- Advocating for funding and support for "programs to ease the transition from prison to community."

The Petitioner also describes steps he has taken in support of his proposed endeavor. He states that he is working on a research study to address mental illness, criminal tendencies and recidivism in order to increase available resources for incarcerated individuals with mental illness. He further states that he has applied for the position of chief executive officer of a newly constructed inpatient treatment center and that his selection would improve safety and security in treating incarcerated individuals with mental illness. Finally, he states that he intends to "create a consultancy firm ... to address the recidivism-menace associated with offenders with mental illness."

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner's proposed endeavor has substantial merit. However, the Director concluded that the Petitioner had not demonstrated that his proposed endeavor has national importance, that he is well-positioned to advance his proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

The Petitioner then filed a motion to reopen the matter which the Director granted. On motion, the Petitioner submitted a brief, additional recommendation letters, a list of citations to his work, and other evidence of his publications and achievements. He also elaborates on his proposed endeavor. He states that he completed his research study and is awaiting publication of his research book titled

[REDACTED]

[REDACTED] In his study he advocates for the "de-institutionalization of treatment" for incarcerated individuals with mental illness. He states that this change in policy would "build economic prospects" by providing incarcerated individuals with employment opportunities that contribute to the U.S. economy and by allowing private businesses to manage treatment plans which include employment and training. He further states that these policy changes would have a broad impact in multiple ways, including:

- Addressing "economic production challenges ... in key agriculture, mining and in oil exploration sectors to mention just a few."
- Improving the U.S. economy in international competitiveness.

- Reducing the cost of imprisonment to the U.S. taxpayer and diverting taxpayer funds to “public amenities and infrastructural improvement.”
- Reducing the overall number of incarcerated individuals within two years.
- Positioning formerly incarcerated individuals “more advantageously after their prison terms.”

After reopening the matter, the Director affirmed the petition’s denial. The Director reiterated the Petitioner’s proposed endeavor as his employment with the [REDACTED]. He concluded that the job duties of the position and other supporting evidence did not demonstrate how the proposed endeavor will extend beyond the Petitioner’s employment as a correction treatment officer to impact the field of criminology more broadly at a level commensurate with national importance. The Director also determined that the Petitioner had not demonstrated “evidence of achievements that he intends to build upon or further develop” to establish that he is well-positioned to advance his proposed endeavor. He noted that the Petitioner’s publications, citations to his work, his membership on the editorial board of an international journal, and his copyright registration were “insufficient to establish a record of success.” He also noted that the record lacked evidence of government interest in his research study to establish a wider national interest in his proposal.

On appeal, the Petitioner asserts that the Director incorrectly applied the requirements of other employment-based immigrant classifications in analyzing whether he is well-positioned to advance his proposed endeavor. He further asserts that the Director did not fully review and consider all of the evidence in the record.

With respect to the Petitioner’s assertion that the Director did not correctly apply the requirements for the EB-2 immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement, the Petitioner points to “page 3 Paragraph 1-3” of the Director’s decision on motion. We note that in those paragraphs the Director addresses whether the Petitioner has established that he is well-positioned to advance his proposed endeavor and analyzes the Petitioner’s Google Scholar profile, papers citing the Petitioner’s work, and recommendation letters. However, the Petitioner does not identify specific language in those paragraphs or anywhere in the Director’s decision that references “different immigrant-employment based category requirements (such as EB1; EB1A and/or I-129).” Upon our review, we determine that the Director properly applied the requirements for the requested EB-2 classification and the three-prong analysis under *Matter of Dhanasar*, 26 I&N Dec. 884.

With respect to the Petitioner’s assertion that the Director did not fully review and consider all of the evidence in the record, we agree. In discussing whether the Petitioner’s proposed endeavor has national importance, the Director referenced the job duties of the Petitioner’s position as correction treatment officer and articles in the record on mental illness and recidivism. However, the Director did not acknowledge or discuss the Petitioner’s research study or the detailed policy changes he outlines in his brief on motion stemming from the initially submitted proposal.

Similarly, in discussing whether the Petitioner is well-positioned to advance his proposed endeavor, the Director does not acknowledge or discuss the Petitioner’s research study, which the Petitioner describes as a specific achievement that he intends to build upon and further develop in pursuit of his proposed endeavor. Additionally, the Director cites to a lack of letters demonstrating interest in the

Petitioner's proposed endeavor without discussing or analyzing the evidence in the record. However, we note that the record includes letters from the [REDACTED] and an independent correctional oversight organization in Illinois. Both letters describe the Petitioner's research study and the impact of his proposed policy changes.

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 "did not show the national importance of [his] proposed endeavor and [he] did not establish that [he has] support and commitment to render [him] well-positioned." However, the Director did not discuss the evidence he weighed in balancing those considerations nor address the Petitioner's specific claims, if any, as to the third prong.

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. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the Director's decision based on this deficiency. On remand, the Director should review and fully analyze the entire record in considering whether the Petitioner has established eligibility under each of the three prongs of the *Dhanasar* framework.

Accordingly, the matter will be remanded to the Director to determine whether 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.