



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26957404

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and an educational psychologist, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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:

- 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 Petitioner proposes to work in the United States as an entrepreneur in the field of educational psychology having worked in Colombia as business owner developing online courses in psychology and entrepreneurship, and as an undergraduate professor in educational psychology. He holds a magister in psychology and a diploma in psychology, both from Universidad [REDACTED] in [REDACTED] Colombia. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree based on his degrees being the foreign equivalent of a U.S. master's degree.

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 Director does not identify or describe the proposed endeavor. The Petitioner did not complete Part 6 of the petition, "Basic Information about the Proposed Employment", and submitted a statement of a broad description of his proposed endeavor, "[r]esearch and training pertaining to [sic] suicide prevention with children and adolescents, as well as support teaching activities in the disciplines of psychology and education." In responding to the Director's request for evidence, the Petitioner submitted a professional plan about his new business, [REDACTED] which is characterized as "a network of education, transformation and entrepreneurship". The professional plan states the business will provide consulting services to "school communities that will help make schools safer places and that parents [sic] can better know and relate to their children."

The Director should analyze the evidence to determine whether the record sufficiently describes the proposed endeavor,³ and whether the endeavor has substantial merit and national importance.

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).

³ An endeavor is more specific than a general occupation, and a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual>.

The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.⁴

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.⁵ 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.

B. Well Positioned to Advance the Proposed Endeavor

For *Dhanasar's* second prong, the Director concluded that while the record shows the Petitioner "has gained skills and experience in his field of endeavor", it did not demonstrate that the Petitioner is well positioned to advance the proposed endeavor. While the decision identifies some of the submitted evidence, the Petitioner's academic record and letters of recommendation, it omits other evidence and does not sufficiently explain the basis for this determination.

The Director should analyze the evidence to determine if the Petitioner is 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. *Dhanasar*, 26 I&N Dec. at 890.

On appeal, the Petitioner argues that the Director did not apply the preponderance of the evidence standard of proof and provides an analysis of the previously submitted evidence. 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). Here, the Director's decision did not adequately address the evidence submitted with the petition or in response to the request for evidence.

Accordingly, we withdraw the Director's determination that the Petitioner does not meet the second prong of the *Dhanasar* framework. Any new determination by the Director must consider all of the evidence offered for prong two, including the Petitioner's academic record, certifications and trainings, memberships, awards, the expert opinion letter, the recommendation letters, and the

⁴ *Id.*

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

Petitioner's employment verification letters. The Director should analyze the specific content of the record to determine if this documentation renders him well positioned to advance the proposed endeavor. If the Director concludes that the Petitioner's documentation does not meet Dhanasar's second prong, his decision should discuss the insufficiencies in his 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 he weighed in balancing those considerations nor address the Petitioner's specific claims, if any, 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

Accordingly, 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.