



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

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

MATTER OF G-P-C-F-K-

DATE: MAR. 8, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an aerospace engineer, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the petitioner to demonstrate 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. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYS DOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

As discussed below, the Petitioner proposes to start an engineering simulations business, [REDACTED]. At the time of filing, he was serving as a [REDACTED] Application and Simulation Engineer for [REDACTED] in [REDACTED] Colorado.

A. Substantial Merit and National Importance of the Proposed Endeavor

With respect to his proposed endeavor, the Petitioner states: "I intend to continue my work and my research in aerospace engineering by starting an engineering simulation business, [REDACTED]. This business will further support projects of national importance, which could include engineering services for launch vehicles or engineering of scientific payloads destined for the [REDACTED]." In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The record, however, does not include documentary evidence of [REDACTED] proposed projects involving launch vehicles or scientific payloads, or other information about the specific engineering research projects the Petitioner will undertake.

In his appeal brief, the Petitioner maintains that he is "attempting to start a business in the category of 'early stage innovation' in aerospace simulations." He requests that we evaluate his national interest waiver request under "*Matter of Dhanasar*, especially with regard to entrepreneurs for this new, flexible criterion." In addition, he offers a business plan for [REDACTED]. In the "Executive Summary" section, this business plan states:

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that the Petitioner received a master of science in aerospace engineering sciences (2014) from the [REDACTED].

⁴ The record indicates that [REDACTED] is a specific brand of computer simulation software.

██████████ will begin as a business offering engineering simulation and analysis services, working to analyze complex engineering problems for customers in industries such as aerospace, consumer products, and biomedical and life sciences. We will use ██████████ software to conduct analyses of many types: structural analysis, thermal analysis, frequency analysis, buckling analysis, fatigue life prediction, and flow analysis.

The business plan further notes that “[t]ypical buyers for ██████████ will be small and medium size businesses, including those in aerospace, consumer product design, medical devices, first-to-market inventors, and others.” Furthermore, the Petitioner offers letters from two of his ██████████ customers expressing their interest in purchasing engineering analysis services from his future company. For example, ██████████ a sales engineer with ██████████ a provider of fracturing services in the oil and gas industry, notes the Petitioner has advised him on computer based flow simulations and that he would be “interested in purchasing consulting time” when the Petitioner’s business becomes operational. In addition, the record includes a letter from ██████████ who is founder and chief executive officer of ██████████ a design engineering consultancy, and also the founder of ██████████ a concrete shelter provider. ██████████ states that the Petitioner has helped him with “simulations of engineering problems such as structural analyses, using ██████████ software” and that he is “interested in buying engineering analysis services from [the Petitioner] when he is allowed to begin business.” We find that the Petitioner’s proposed work has substantial merit, as it is aimed at offering engineering simulation and analysis services for his company’s future clients.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. He contends that “small aerospace businesses such as my proposed entrepreneurship do indeed have national importance,” but, as we will discuss below, he has not sufficiently demonstrated the breadth of his company’s implications through supporting documentation. In addition, the Petitioner asks that we consider letters describing his previous work on the ██████████ project at the ██████████ ██████████. However, these letters address his past projects rather than the national importance of his proposed endeavor.

The Petitioner has not established that his proposed work for ██████████ has implications beyond his company and its potential clients at a level sufficient to establish the national importance of his endeavor.⁵ While he asserts that his company must attract initial customers before pursuing contracts with larger customers such as the ██████████ ██████████ and the ██████████ he does not sufficiently explain or demonstrate how his future work for ██████████ stands to affect these particular agencies or the broader defense and aerospace industries. Nor does the record show, for instance, that the specific work the Petitioner proposes to undertake offers original innovations to advance the

⁵ In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

aforementioned industries, or that it otherwise has wider implications in the aerospace simulations field.⁶

In addition, the Petitioner asserts that his “business has significant potential to employ U.S. workers. After one year in business, I intend to hire at least one additional employee.” The record, however, does not show that hiring one additional employee represents a significant potential to employ U.S. workers or that it otherwise offers substantial positive economic effects for the nation. As the Petitioner has not established that his specific endeavor’s prospective impact supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications. For the reasons discussed below, we withdraw the Director’s finding that the Petitioner meets this prong.

The Petitioner submitted his curriculum vitae, academic records, documentation of a postgraduate scholarship from the [REDACTED] and evidence of his graduate research work (a conference presentation and a poster presentation). In addition, the Petitioner offered reference letters discussing his involvement with the [REDACTED] project at the [REDACTED]. The record also includes articles discussing payloads (including [REDACTED]) transported to the [REDACTED] and information about [REDACTED] components.

With regard to his proposed business, [REDACTED] the Petitioner offers a business plan, financial forecasts and projections, and a bank statement reflecting that he has \$20,501.57 in funds to start his business.⁸ On appeal, the Petitioner asserts that he is “one of only five individuals in state of Colorado to have achieved the Certified [REDACTED] Professional certificate” and that he is skilled at conducting “dynamic, fluid flow, thermal heat conduction, and other type[s] of aerospace simulations.” While the letters of support and other evidence indicate that the Petitioner has experience in payload design for space based research and [REDACTED] software, the record does not show that this past experience renders him well positioned to advance his proposed endeavor aimed at starting an engineering simulations business.

⁶ While the record indicates that the Petitioner performed and presented research as part of his graduate studies at the [REDACTED] research center, he has not sufficiently demonstrated that aerospace engineering research and development projects are the focus of his proposed endeavor. Rather, the record shows that he intends to start a company that offers engineering simulation and analysis services to a variety of businesses, including those involved in aerospace, consumer product design, medical devices, first-to-market inventions, life sciences, oil and gas, and concrete.

⁷ For instance, the evidence includes letters from the Petitioner’s professors at [REDACTED] describing his work on [REDACTED] mechanical and thermal systems.

⁸ The projected income statement and sales forecast for the year ending August 31, 2018 reflect operating profit of \$124,101 and total sales of \$145,704, respectively.

We acknowledge the two letters from [REDACTED] and [REDACTED] expressing interest in purchasing engineering analysis services from Petitioner's future company. The record, however, does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that he is well positioned to advance his proposed company. Nor does the evidence show that the Petitioner's track record of running a business, business plan for future activities, and progress towards achieving his company's goals rise to the level of rendering him well positioned to advance the proposed endeavor. For these reasons, he has not established that he satisfies the second prong of the *Dhanasar* framework.

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

As explained above, the third prong requires the petitioner to demonstrate 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. Here, the Petitioner claims that he is eligible for a waiver due to his knowledge and experience, potential job creation resulting from his business, and the impracticality of labor certification. However, as the Petitioner has not established the national importance of his proposed endeavor and that he is well positioned to advance his endeavor as required by the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of G-P-C-F-K-*, ID# 1033730 (AAO Mar. 8, 2018)