



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

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

MATTER OF K-C-O-

DATE: MAR. 31, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a lawyer, 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 Nebraska 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 she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. In December 2016, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*.

In support of her appeal, the Petitioner submits additional documentation and argues that she is eligible for a national interest waiver because she has "satisfied the three prongs under the new 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* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (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. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

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

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) (*NYSDOT*).

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 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 Petitioner holds a doctor of jurisprudence from the [REDACTED] in [REDACTED] Michigan. Accordingly, the Director determined that the Petitioner qualified for classification as a member of the professions holding an advanced degree. 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

In the initial filing, the Petitioner stated that she intends to work as a public interest lawyer offering legal services to clients. In a June 2014 letter accompanying the petition, she indicated that her practice provides "legal services to low-income communities," and "significantly helps to make access to substantial justice a reality for most people – thus making the core constitutional right to fair and competent representation achievable to all low-income earners." The Petitioner further stated that she has a "deep interest" in "civil rights and immigration laws," and that she intends to "engage in public interest law practice upon admission to the Illinois State Bar."

In the RFE, we asked the Petitioner to provide evidence documenting the potential prospective impact of her proposed endeavor representing clients in low-income communities. We noted, for example, that she could provide evidence related to how her representation of indigent clients offers substantial positive economic effects for the nation, or how it has broader implications for her field, beyond her particular pool of customers or clients. We also asked the Petitioner to provide updated information and evidence regarding any current employment and her plans for future work.

In response, the Petitioner explains that she is now working as an attorney providing tax advice to individual and business clients, and she provides a copy of a job offer from [REDACTED] for the

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

position of “practitioner.” She states that she has “personally handled and help settle tax between \$2,000 and \$1 million,” and that her work saves the “federal or state government from tremendous amount of money in litigation and collection fees.” She also indicates that she intends to continue to offer pro bono legal assistance to African immigrants. The Petitioner submits a letter from [REDACTED] of [REDACTED] confirming that she continues to serve as a pro bono volunteer with the organization. We find that the Petitioner’s proposed work, in which she offers legal advice to her clients, has substantial merit.

With respect to the national importance of her endeavor, the Petitioner explains in her RFE response that, “though she lives in Illinois and is licensed to practice within that state,” she is “not limited to helping clients in one geographic area.” She claims that her work “has a broader implication of national importance when properly considered the service rendered affects the entire nation, tax.” The Petitioner maintains that she has a demonstrated record of providing legal advice to both immigration and tax clients and that “taxation is paramount to national security,” and that “for the government to function and continue to do her job, it needs to collect tax from her citizen [*sic*].”

The Petitioner does not explain the change in her proposed endeavor from representing indigent clients to practicing tax law, nor does she indicate whether her new role as a tax practitioner similarly serves low-income communities or clarify the amount of her time that will be devoted to pro bono work. Regardless of whether the Petitioner aims to work as public interest attorney or a tax attorney, however, she has not provided sufficient evidence that her proposed endeavor is of national importance. While she contends that her role providing tax advice to clients aids the U.S. interests of collecting revenue, we find her prospective impact too attenuated to be considered a “substantial positive economic effect.” She also asserts that her endeavor is of national importance because she will not be limited to one geographic area since she will be representing clients from a variety of states. However, she hasn’t shown her representation has implications that extend beyond the pool of clients she will serve.³ The geographic diversity of her clientele does not, by itself, establish that her work stands to impact the broader field or otherwise have implications rising to the level of national importance. Accordingly, the Petitioner has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

Regarding the second prong of *Dhanasar*, our RFE requested the Petitioner to submit documentation showing that she is well positioned to advance her proposed endeavor. In response, the Petitioner submits the above-noted job offer from [REDACTED] along with the letter from [REDACTED] of [REDACTED] confirming that she continues to serve as a pro bono volunteer with the organization. She also maintains that she “has provided hours and hours of pro bono legal services in the past,” and that she has submitted evidence of her “level of commitment and past work in pro bono legal services and public interest law.”

³ Similarly, 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. See *Dhanasar*, 26 I&N Dec. at 893.

The record includes several letters attesting to the Petitioner's work in the field of public interest law. For example, [REDACTED] attorney with the [REDACTED] confirms that the Petitioner has provided "valuable services" to low income clients, "contributing greatly to the progress of some clients' cases." While the submitted evidence relates to the Petitioner's experience as a public interest lawyer, her proposed endeavor, as described in response to our RFE, appears to be primarily as a tax lawyer.⁴ Without information or evidence documenting her prior experience providing legal taxation advice, we cannot conclude that she is well positioned to advance the proposed endeavor that she described in the RFE response, representing tax clients. For this reason, the Petitioner has not established that she satisfies the second prong of the *Dhanasar* framework.

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

Third and finally, we conclude that on balance, the Petitioner has not established that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁵ Here, the Petitioner notes in her RFE response that she now has a job, and the record does not include evidence explaining why obtaining a labor certification would be impractical. In addition, while the Petitioner contends the record shows the importance of her work, she has not demonstrated her prospective work would serve an urgent national interest, and the record does not indicate that she offers contributions of such value 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. The Petitioner therefore has not established that she meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of K-C-O-*, ID# 77988 (AAO Mar. 31, 2017)

⁴ As noted previously, because the Petitioner has provided differing accounts of her proposed endeavor, we are unable to properly characterize what she aims to do.

⁵ The labor certification process is designed to certify that the foreign worker will not displace, nor adversely affect the wages and working conditions of, U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from business necessity.