



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

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

In Re: 12210833

Date: MAY 27, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an executive specializing in the management of nonprofit organizations, seeks second preference immigrant classification as an individual of exceptional ability, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner was a member of the professions holding an advanced degree or eligible for a national interest waiver. On appeal, the Petitioner asserted that he qualified for classification as an individual of exceptional ability, and that he was eligible for a national interest waiver. We agreed with the Director's conclusion that the Petitioner did not qualify as a member of the professions holding an advanced degree, but remanded this matter to the Director for consideration of the Petitioner's qualification as an individual of exceptional ability. In addition, we withdrew the Director's decision that the Petitioner met the first prong of the national interest waiver analysis under *Matter of Dhanasar*, 26 I&N Dec. 884, and instructed the Director to review this issue and request further evidence of the nature of the Petitioner's proposed endeavor if deemed necessary. After considering the Petitioner's response, the Director found that he did not qualify as an individual of exceptional ability, and also concluded that while he met the first prong of the analysis under *Dhanasar*, he was not otherwise eligible for a national interest waiver. On appeal, the Petitioner submits asserts that he qualifies for the underlying EB-2 visa classification and is eligible for a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). This, however, is only the first step, and the successful submission of evidence meeting at least three criteria does not, in and of itself, establish eligibility for this classification.¹ When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. USCIS Policy Memorandum, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, PM-602-0005.1 (Dec. 22, 2010).

having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i).

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.² *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a 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.

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 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.³

II. ANALYSIS

The Petitioner has served in management positions for several companies, and has served on the board of nonprofit organizations including the [REDACTED] and the [REDACTED]. Although much of his description of his proposed endeavor focuses on his past achievements, he indicates that he intends to continue

² 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*).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

managing nonprofit organizations that promote Korean culture and diversity in the United States through programs and events.

A. Individual of Exceptional Ability

As noted, the Director concluded in his most recent decision that the Petitioner had not established his qualification for the underlying EB-2 classification. Specifically, while he found that the evidence met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), regarding to a degree or diploma relating to the area of exceptional ability and ten years of full-time experience in the occupation sought, he concluded that it did not show that the Petitioner had received recognition for achievements and significant contributions to the field of nonprofit management per the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

On appeal, the Petitioner submits additional evidence in the form of certificates, some of which were previously submitted, from government entities and community organizations which acknowledge his contributions to the local community. Several of these were given to the Petitioner by various officials of the [redacted] many for his contribution to specific events. For example, a certificate dated [redacted] 2015 recognizes his “participation in the Radio Korea [redacted]” while another dated [redacted] 2014 salutes his “participation and support of the 2014 [redacted] Date Celebration.” Others are less specific, such as a certificate of appreciation dated simply [redacted] 2015 and signed by [redacted] Councilmember [redacted] which was given to the Petitioner “for exemplary efforts and accomplishments which have been of great value to the community...” Although the certificates thank him for his participation and contributions to civic events in his community, they do not establish that he has been recognized for achievements and significant contributions to the field of nonprofit management.

Other certificates in the record include a “Certificate of Congressional Recognition” dated [redacted] [redacted] 2012 thanking the Petitioner for his “contributions and donations to the Comfort Women Monument,” and certificates from the [redacted] and [redacted] which thank him for his service to those organizations, which . These certificates recognize his contributions to those organizations, such as organizing fundraising and cultural events, but do not establish that the Petitioner has been recognized for significant contributions which have impacted the broader field of the management of nonprofit organizations.

The Petitioner also submits on appeal a letter from [redacted] of the University [redacted] [redacted] [redacted] summarizes the Petitioner’s career in business and nonprofit organizations, and references several documents in the record. He concludes that the Petitioner “has played a critical role in the operations of numerous organizations dedicating to enriching the lives and promoting the culture of Korean American citizens.” We have already considered the recognition given to the Petitioner as a result of his work for nonprofit organizations, as evidenced by the certificates described above. Also, as noted in the Director’s most recent decision, letters such as these are less probative evidence of recognition than contemporaneous recognition honoring a specific achievement. In addition, we note that this criterion requires recognition by peers, government entities, or professional or business organizations, and [redacted] falls into none of these categories.

Per the analysis above, we agree with the Director and conclude that the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner has not submitted the required initial evidence of documents that meet at least three of the six criteria, and we therefore need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i). Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

B. National Interest Waiver

Although the Petitioner has not established his eligibility for the underlying EB-2 visa classification, and is therefore not eligible for a national interest waiver, we will briefly consider his claims under the first prong of the *Dhanasar* framework.

In our previous decision remanding this matter to the Director, we concluded that the Petitioner's description of his proposed endeavor lacked detail, such that we were unable to determine that his work will have substantial merit and national importance. We also noted that the previous descriptions of the proposed endeavor focused on the Petitioner's previous work, rather than its potential prospective impact. In response to the Director's RFE seeking further detail, he submitted a personal statement which again focuses mainly on his past accomplishments, but also stated that he "manage[s] several nonprofit organizations that promote the Korean culture and diversity in the U.S. through various programs and events." He indicated that in addition to serving as the Public Safety & Beautification Committee Chair for the [redacted] he also holds executive positions with several other organizations, and submitted evidence including business registration documents and copies of business cards. These organizations include [redacted] the [redacted] [redacted] and the [redacted] Beyond his statement that [redacted] [redacted] "publishes news and articles related to Korean American communities," he provides no information about how his proposed activities and roles with these organizations would advance his proposed endeavor of promoting Korean culture and diversity.⁴

In addition, while he refers to the website of the National Endowment for the Arts and its statement that one of the purposes of its grants is to "preserve and provide access to cultural and educational resources," the Petitioner does not provide a detailed description of how his activities with these organizations would potentially provide a prospective impact on those nationally important objectives at a broader level. Although we noted in *Dhanasar* that that impact is not evaluated in solely geographic terms, it is the Petitioner's burden to show that his proposed activities with the [redacted] and other organizations will have broader implications in the field of the management of nonprofit organizations.

⁴ The Petitioner also submitted limited evidence regarding his management of several businesses, including [redacted] and [redacted]. Since his personal statement indicates that his petition rests on his management of nonprofit organizations related to Korean American culture, this evidence is not relevant to our analysis under the first prong of the *Dhanasar* framework.

The Director concluded in his most recent decision that the Petitioner met prong one of the *Dhanasar* framework, but did not provide an analysis of the evidence submitted in that regard in response to his RFE. We note that in evaluating whether the Petitioner is well positioned to advance his proposed endeavor, the decision states that “the personal statement submitted lacks, [*sic*] specific, detailed information regarding the beneficiary’s proposed work in the United States.” While we agree with that statement, that issue is properly considered under the first prong of the *Dhanasar* framework, given its focus on the future implications of the Petitioner’s work, rather than the review of his past accomplishments and overall current positioning conducted in the second prong. We therefore withdraw that aspect of the Director’s decision and conclude that the Petitioner has not submitted sufficient information to show that his proposed endeavor is of national importance.

Because we conclude that the Petitioner has not established that he qualifies under the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver. Therefore, although he also asserts that he meets the requirements of the second and third prongs of the framework, we will reserve these issues.⁵

III. CONCLUSION

The Petitioner has not established eligibility for the underlying EB2 immigrant visa classification as an individual of exceptional ability, nor has he demonstrated that he qualifies for a national interest waiver of that classification’s job offer requirement. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).