



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

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

In Re: 19271321

Date: SEPT. 21, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a a private university, 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 employment-based “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 although the Beneficiary qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

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 withdraw the Director’s decision and remand the matter for further consideration and the 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. 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 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

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).

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*).

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

As noted earlier, the initial focus of the three-prong analysis is on the endeavor itself. Although the analysis does call for the focus to move away from the proposed endeavor, shifting to the foreign national and their ability to advance the endeavor, this shift cannot take place unless the endeavor is determined to have substantial merit and national importance. This determination, however, cannot be made and thus the first prong cannot be deemed to have been satisfied without a clear understanding of the endeavor the Petitioner seeks to promote.

In the present matter, the record indicates that at the time of filing, the Beneficiary was working for the Petitioner as a statistical data analyst. The Petitioner stated that the Beneficiary's work has been funded by U.S. government agencies and explained that the Beneficiary's work is focused on developing data analytics and machine learning algorithm techniques to be applied in the [redacted] and [redacted] industries. The Petitioner also discussed various projects the Beneficiary has worked on since commencing her employment with its organization in 2013 and provided letters of support from colleagues who lauded the Beneficiary's research and contributions with respect to the

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

listed projects. In other words, the Petitioner discussed the Beneficiary's role with respect to the projects she worked on, but it did not specifically identify the Beneficiary's proposed endeavor, an element that is fundamental to conducting the three-prong analysis within the *Dhanasar* framework.

With the initial filing, the Petitioner provided a supporting cover letter in which it described the Beneficiary's employment background and work experience, which includes her position as a full-time research analyst at the petitioning institution and a part-time statistical data analyst at the Petitioner's "spin-off company." The Petitioner stated that the Beneficiary's work with advanced data analytics and machine learning algorithms has resulted in her development of techniques that can be applied in the areas of [redacted] and [redacted]. The Petitioner listed four projects – one in [redacted] and three in the [redacted] industry – and described the types of improvements that resulted from the Beneficiary's data analytics work. In sum, the Petitioner stated that the Beneficiary's "research contributions" have substantial merit and national importance and further claimed that the Beneficiary is well positioned "to continue to advance her research in these areas." In support of these claims, the Petitioner provided letters from the Beneficiary's colleagues, including four professors and one founder and president of a company whose flagship analytics tool is claimed to have been created with the help of the Beneficiary's research contributions. However, none of this evidence describes with any specificity the proposed endeavor that the Beneficiary will undertake.

Although the Director issued a request for evidence (RFE), he did not seek clarification of the proposed endeavor and instead determined that the Beneficiary's work "in the fields of advanced data analytics and machine learning" meets the first prong requirements of the *Dhanasar* framework, thereby indicating that a proposed endeavor had been adequately identified. The prerequisite for determining whether a proposed endeavor satisfies the three prongs of the *Dhanasar* framework is to first identify the endeavor itself. Without an understanding of this most basic element, we cannot conduct a comprehensive analysis within the *Dhanasar* framework, which requires that we evaluate the substantial merit and national importance of the proposed endeavor prior to shifting our focus to the foreign national. Here, the Petitioner discussed the Beneficiary's area of research and described past projects where that research was utilized. However, the Petitioner did not identify the specific endeavor the Beneficiary seeks to pursue. Despite this evidentiary deficiency, the Director concluded that the Petitioner met the requirements of *Dhanasar's* first prong and continued with an analysis of the second and third prongs.

Because we find that the Petitioner has not provided sufficient details of the Beneficiary's proposed endeavor, the Director's decision cannot be affirmed. However, the Director did not accurately identify or explain the deficiencies in the evidence, as required by 8 C.F.R. § 103.3(a)(1)(i). On remand, the Director should seek further information and clarification of the Beneficiary's proposed endeavor. The Director may issue an RFE requesting additional evidence addressing this critical element. Unless and until the Petitioner conveys a meaningful understanding of the proposed endeavor, the Director cannot proceed with an assessment of the Petitioner's eligibility for a national interest waiver within the context of *Dhanasar's* three-prong analysis. Once the Petitioner provides the necessary information about the proposed endeavor, the Director shall then analyze the supporting evidence under the *Dhanasar* framework to determine whether the Petitioner has established eligibility for the national interest waiver.

ORDER: The Director's decision is withdrawn and the matter is remanded for further consideration and the entry of a new decision consistent with the above analysis.