



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

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

In Re: 26379201

Date: MAY 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a Ph.D. student researching alternative energy storage technologies seeking classification as a member of the professions holding an advanced degree or of exceptional ability, Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish 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. 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 sustain 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.

Whilst 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 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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 the noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

## II. ANALYSIS

The Petitioner described their plans to advance their proposed endeavor in probative detail. Chiefly, the Petitioner intends to develop novel energy production and storage technologies under the auspices of a graduate research assistant position they held whilst pursuing their Ph.D. at the University of [REDACTED] and a future post-doctoral research fellowship at the same institution. The evidence demonstrates that they have earned two master's degrees, one in petroleum engineering and another in engineering physics. So, the Petitioner qualifies for the underlying classification as an advanced degree professional. We also note the Director's understandable concern regarding the Petitioner's incomplete presentation of the contours of the proposed endeavor at the time of filing. Nevertheless we, like the Director, conclude that the Petitioner's initial statement of their proposed endeavor, elaborated upon in their response to the RFE, in combination with articles and reports describing the national strategy on critical and emerging technologies, has reinforced the broader implication of their work and established by a preponderance of the evidence that their proposed endeavor has substantial merit and is of national importance.

As the second prong of the *Dhanasar* analytical framework turns to the individual, we disagree with the portion of the Director's analysis of *Dhanasar's* second prong which referred to the Petitioner's proposed endeavor. We conclude that, in this specific case, the Petitioner's multiple master's degrees and in-progress Ph.D. constitute a strong educational foundation for, and specific knowledge of, the field of endeavor. The Petitioner has also provided sufficient evidence of previous academic and industry experience. They have demonstrated a notable publication and citation history, as well as evidence of others citing to the Petitioner's finding in their own work advancing their field. Academic acquaintances and professionals in the field provided credible, detailed accounts of the Petitioner's past and current work. And the Petitioner described their plan for future research and bolstered that description with credible documentation and meaningful details concerning their progress towards those initiatives which collectively established by a preponderance of the evidence that they are well positioned to advance their proposed endeavor.

The Petitioner established by a preponderance of the evidence that it would be beneficial for the United States to waive the requirements of a job offer and labor certification. They have documented their past successes and demonstrated the significance of their proposed work with evidence in the record supporting that their specific work in the field would benefit the United States even assuming other qualified U.S. workers are available.

### III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude they have established that they are eligible for and otherwise merit a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.