



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

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

In Re: 26953571

Date: MAY 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a systems developer, seeks classification as a member of the professions holding an advanced degree. *See* 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 EB-2 immigrant 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.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, 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. 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 withdraw the Director's decision and remand the matter for 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

¹ *See also 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 proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

As noted, the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. However, the Director determined that the record did not establish her eligibility under the first and third prongs of the *Dhanasar* framework, and therefore found her ineligible for a waiver of the job offer requirement. For the reasons discussed below, we will withdraw the Director's decision and remand the matter to the Director for entry of a new decision.

A. Substantial Merit and National Importance

The first prong of *Dhanasar* focuses on the specific endeavor that the Petitioner proposes to undertake. In the decision denying the petition, the Director concluded that the Petitioner did not demonstrate her proposed endeavor had national importance, and did not make a determination regarding its substantial merit.

Regarding the proposed endeavor's substantial merit, the Director stated as follows:

The [P]etitioner provided a letter from [redacted] Professor - Computer Science, Information Systems, & Cyber Security, [redacted] University, [redacted] Oregon, who opines that the [P]etitioner satisfies the *Dhanasar* analytical framework. While the letter may help clarify or explain the [P]etitioner's field of endeavor, experience, and achievements, the letter does not exempt the [P]etitioner from establishing eligibility with independent, documentary evidence.

On appeal, the Petitioner states that "the wording is unclear and does not provide the reason for denial regarding the Petitioner's proposed endeavor and its substantial merit, which impedes the Petitioner from discussing the terms and motivation for denial." She further notes that "there is no specific mention stating whether the criterion relating to substantial merit was met or not." In addition, she asserts that she submitted evidence and provided detailed information about her proposed endeavor that was not considered by the Director.

We agree with the Petitioner that the decision did not contain a proper analysis of the proposed endeavor's substantial merit or a sufficient discussion explaining why she had not satisfied this requirement. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). The Director's decision lacks a detailed analysis of the evidence submitted in support of the petition with respect to the proposed endeavor's substantial merit, and does not acknowledge the evidence the Petitioner submitted in response to a request for evidence (RFE).

Regarding the proposed endeavor's national importance, the Petitioner asserts that she submitted sufficient evidence to establish that her endeavor would have substantial positive economic effects, including national or global implications. Upon review, the language in the Director's decision regarding the proposed endeavor's national importance was copied almost verbatim from the RFE.² Aside from stating, "It appears that the [P]etitioner will work as an Information Technology professional," there is no specific discussion of the proposed endeavor or explanation for the Director's conclusion that the proposed endeavor does not have national importance. Moreover, as noted by the Petitioner, the decision did not address the documentation submitted in response to the RFE, which included a professional plan and a 17-page statement exclusively discussing how the proposed endeavor would have substantial positive economic effects and national or global implications. Given the amount and type of evidence submitted in support of the proposed endeavor's national importance, both initially and in response to the RFE, we find the Director's brief analysis did not adequately inform the Petitioner of the reasons for concluding that the proposed endeavor did not have national importance.

The Director should analyze the Petitioner's evidence to determine if her proposed endeavor has both substantial merit and national importance. If the Director concludes that the Petitioner's documentation does not meet the requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

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

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. While the Director's decision identifies some of the factors to consider when determining whether a petitioner qualifies under *Dhanasar's* third prong and indicates that the Petitioner had not established eligibility under this prong, the Director did not adequately discuss the evidence and sufficiently explain the basis for this determination. If the Director determines that the Petitioner's documentation does not meet this prong, the decision should address all of the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

For the reasons discussed, the Director's decision is withdrawn. On remand, the Director should review all evidence submitted to date (including the brief and the documentation submitted on appeal) and analyze the Petitioner's contentions and evidence to determine if she meets all three prongs set forth in the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the new decision.

² The language discussing the proposed endeavor's substantial merit in the denial was also copied virtually verbatim from the RFE.

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