



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26954248

Date: MAY 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and an international educational consultant, seeks employment-based second preference (EB-2) 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates that:

- 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

The Petitioner proposes to work in the United States as an entrepreneur in the field of educational consulting. She holds a master of education degree in international education policy and management from [redacted] University in [redacted] Tennessee, and a master's diploma in arts from [redacted] University in the country of Georgia. The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree. However, the Director concluded the Petitioner did not establish 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

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The Director's decision concluded that "substantial merit and national importance is met." However, the decision does not sufficiently explain the basis for this determination.

With the petition, the Petitioner submitted a statement which broadly described her proposed endeavor to establish an educational consulting service "with the aim of helping prospective students unveil their potential, overcome mental barriers and prepare academically to study in the United States at the higher education institution . . . of their choice." In responding to the Director's request for evidence, the Petitioner submitted a business plan about her new company, [redacted] which will offer online counseling and academic support services to international students seeking to study in the United States. The Petitioner would be the lead service manager, overseeing the business' administration and operations to ensure clients receive individualized coaching and advice. The business plan states the company will "contribute to the internationalization of the U.S. higher education and to support its economic growth by helping talented international students study in the [United States]."

The Director should analyze the evidence to determine whether the record sufficiently demonstrates the endeavor has substantial merit and national importance. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.³ In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. An endeavor

² 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).

³ See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policymanual>.

having significant potential on the broader implications for a field or region, generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.⁴ The Director should review the record to determine whether the Petitioner has demonstrated her proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

In the second prong, the focus shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. We consider factors including, but not limited to: their 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. *Dhanasar*, 26 I&N Dec. at 890.

For *Dhanasar's* second prong, the Director concluded that while the record shows the Petitioner "has gained skills and experience in her field of endeavor," it did not demonstrate that the Petitioner is well positioned to advance the proposed endeavor. However, the decision did not sufficiently explain the basis for the determination. The decision does not describe the evidence reviewed by the Director to make the determination. The decision names two documents of evidence, the Petitioner's degree and letters of recommendation; however, this appears to be incorrect since the record does not indicate that the Petitioner submitted letters of recommendation. Also, the decision does not mention or analyze other evidence submitted by the Petitioner.

On appeal, the Petitioner argues that the Director erred in finding the evidence was not sufficient to establish the Petitioner is well positioned to advance the proposed endeavor. The Petitioner reiterates her earlier assertions, and submits new evidence, letters of recommendation, certificates of the Petitioner's recent completion of online coursework, and a draft strategic plan and "pitch deck" for a business, [redacted] described as a brand co-founded by the Petitioner.

It is unclear from the evidence submitted with the appeal whether the Petitioner has changed her proposed endeavor. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

An officer must fully explain the reasons for denying a petition in order to allow a 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 denial to allow the respondent a meaningful opportunity to

⁴ See generally 6 USCIS Policy Manual at F.5(D)(1).

challenge the determination on appeal). Here, the Director's decision did not adequately address the evidence submitted with the petition or in response to the request for evidence. The Director should analyze the evidence to determine if the Petitioner is well positioned to advance the proposed endeavor.

Accordingly, we withdraw the Director's determination that the Petitioner does not meet the second prong of the Dhanasar framework. Any new determination by the Director must consider all of the evidence offered for prong two, including the Petitioner's academic record, certifications and trainings, memberships, the invitations to review articles, the work paper, and the expert opinion letter. The Director should analyze the specific content of the record to determine if this documentation renders her well positioned to advance the proposed endeavor. If the Director concludes that the Petitioner's documentation does not meet Dhanasar's second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

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

As to the third prong of Dhanasar, the Director stated the law and the relevant considerations in performing the third prong's balancing analysis and concluded that the Petitioner "has not established 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." However, the Director did not discuss the evidence weighed in balancing those considerations or address the Petitioner's specific claims, if any, as to the third prong. Without a proper evaluation of the factors identified in Dhanasar's third prong, the Director's determination for this prong was in error. If the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

Accordingly, we are remanding the petition to the Director to determine if the Petitioner has established eligibility for a national interest waiver and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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