



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

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

In Re: 32204931

Date: APR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a technology company involved in electrical product and integrated software/hardware development and production, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary, an embedded systems architect, as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act, 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.

The Director of the Texas Service Center initially denied the petition and subsequently affirmed his decision on motion, concluding that the record did not establish that a waiver of the classification's job offer requirement would be in the national interest. We initially granted the Petitioner's erroneous request to withdraw the instant appeal, but subsequently reopened the appeal *sua sponte*, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), to consider anew the merits of the claims contained in its appeal brief.¹ The matter is now before us on appeal pursuant to 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 the beneficiary's 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

¹ The Petitioner was permitted a period of 30 days in which to provide a supplemental brief. We did not receive a supplemental submission within that time frame and therefore consider the record to be complete as presently constituted.

If a petitioner demonstrates the beneficiary's eligibility for the underlying EB-2 classification, it must then establish that they merit 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 framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,² 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.³

II. ANALYSIS

The Director determined that the Beneficiary qualifies for EB-2 classification as a member of the professions holding an advanced degree, and the record supports this conclusion. The Petitioner presented the master's degree the Beneficiary earned in electrical engineering from the [redacted] [redacted] at [redacted] in 2015. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree"). Therefore, the sole issue before us is whether the record establishes that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

At the time of filing, the Petitioner employed the Beneficiary as an embedded systems architect.⁴ In this capacity, the Beneficiary has been responsible for researching and developing the firmware for the Petitioner's [redacted], the "world's first and only [redacted] [redacted] [redacted] The Beneficiary also developed the [redacted] web-based system, used in the [redacted] and in the Petitioner's growing commercial line of [redacted] electric vehicle (EV) charging stations.

With regard to his proposed endeavor, the Petitioner's initial submission indicated it intends to have the Beneficiary continue his research and development of the company's [redacted] technology in "the fields of motor controls for large industrial and commercial facilities and [EV] charging." Within the Petitioner's response to the Director's request for evidence, its representatives provided that the focus of the Beneficiary's work will include "commercial fleet/multifamily [EV] charging and residential demand response [], and solar energy storage product lines," and that his work on these projects will be shared with others in the field through "scientific conferences and meetings." For the reasons discussed below, we conclude the Petitioner has established the Beneficiary's eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

² *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

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

⁴ As the Beneficiary is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

We withdraw the Director's determination that the Petitioner did not establish the national importance of the Beneficiary's proposed endeavor under *Dhanasar's* first prong. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. As evidence that the Beneficiary's proposed research has substantial merit and national importance, the Petitioner presented information about global and U.S. circuit breaker and EV charging technology markets, and research and development in those fields.⁵ Its evidence included letters of support discussing how the Beneficiary's undertaking contributes to advancements in the development of improved renewable energy technologies. Additionally, the Petitioner submitted documentation indicating that the benefit of the Beneficiary's proposed research offers broader implications for the field of electrical engineering, as the circuit breaker and EV charging technology he has been essential in developing has been implemented with commercial and industrial clients throughout the United States, and disseminated to others in the field through publication and presentation of his work. As the Petitioner has demonstrated both the substantial merit and national importance of the Beneficiary's proposed endeavor, it has established that he meets the first prong of the *Dhanasar* framework.

B. Well-positioned to Advance the Proposed Endeavor

We agree with the Director's determination that the Petitioner has shown that the Beneficiary satisfies the second prong of the *Dhanasar* framework.⁶

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

We withdraw the Director's determination that the Petitioner did not establish that the Beneficiary meets *Dhanasar's* third prong. As explained above, this prong requires a 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. *Id.* at 890. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process.

In each case, the factor(s) considered must, taken together, establish 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.

⁵ This information included an article about U.S. Government initiatives to build out a national EV charging network as an important step to expand our country's EV charging accessibility and support the competitiveness of its EV manufacturing industry.

⁶ "USCIS considers an advanced degree, particularly a Doctor of Philosophy (Ph.D.), in a STEM field tied to the proposed endeavor and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong." See 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual>.

Dhanasar, 26 I&N Dec. at 890-91.⁷ As an embedded systems architect, the Beneficiary possesses considerable experience and expertise in his STEM research field. The Petitioner has documented the Beneficiary's past successes in circuit breaker and EV charging technology research and advanced technology development. In addition, the record demonstrates the widespread benefits associated with research progress in the development of next-generation circuit breaker and EV charging technology. Finally, on motion and appeal, as further corroborating documentation regarding the significance of the Beneficiary's work, the Petitioner cites to the U.S. National Science and Technology Council's updated list of critical and emerging technologies and notes the Beneficiary's involvement in projects related to the listed critical and emerging technology area of Clean Energy Generation and Storage. Based on the Beneficiary's track record of successful research work and the significance of his proposed work to advance U.S. interests furthering a critical and emerging technology, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available. The Beneficiary, therefore, satisfies the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has shown that the Beneficiary meets the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that it has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

⁷ When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a strong positive factor:

- The person possesses an advanced STEM degree;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

See 6 USCIS Policy Manual, *supra*, at F.5(D)(2).