



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

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

In Re: 28582230

Date: FEB. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager in information technology and telecommunications systems, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 Acting 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. 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.

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.*

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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the framework set forth in *Matter of Dhanasar*.

The Petitioner states that she has “over 16 years of experience in information technology and telecommunication systems, orchestrating and managing teams in Project Management, Operations, and Customer Success areas.” She states that her proposed endeavor is to continue her career “as a project manager and business strategist working with startups of different segments of the economy, helping them in the areas of technology, artificial intelligence, and cybersecurity.”⁴

With the initial filing the Petitioner submitted evidence of her education and experience, a professional plan and personal statement describing her proposed endeavor and claimed eligibility for a national interest waiver, as well as recommendation and support letters, and an expert opinion letter. She also submitted industry reports on project management and evidence that technology development is a U.S. government initiative.

Following initial review, the Director issued a request for evidence (RFE) dated August 24, 2022, allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. Specifically, the RFE noted that the Petitioner had not established her eligibility for classification as an advanced degree professional, or any of the three prongs of the *Dhanasar* framework.

Before the Petitioner responded to the RFE, the Acting Director issued a second RFE dated January 5, 2023. The second RFE contradicted the first in that it stated that the Petitioner had demonstrated

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 The record demonstrates that the Petitioner holds a U.S. master of business administration degree awarded in 2021. See 8 C.F.R. § 204.5(k)(3)(i)(A).

⁴ We note that, subsequent to the filing of this appeal, the Petitioner filed another immigrant petition seeking 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. This immigrant petition has been approved.

her eligibility for classification as an advanced degree professional. The second RFE also requested evidence to demonstrate that the Petitioner meets the first and third prongs of the *Dhanasar* framework but includes no discussion on the second prong.

After reviewing the Petitioner's responses to both RFEs, the Acting Director determined that the Petitioner's proposed endeavor has substantial merit. However, the Acting Director concluded that the Petitioner had not established that her proposed endeavor was of national importance, or that on balance, waiving the job offer requirement would benefit the United States. The Acting Director also made contradictory statements regarding the second prong of the *Dhanasar* framework, stating initially that the Petitioner had established that she is well-positioned to advance the proposed endeavor, but later in the decision stating that she had not.

On appeal, the Petitioner asserts that the Acting Director made several errors in this matter, including issuing two contradictory RFEs, and making contradictory statements regarding whether the Petitioner had met the second *Dhanasar* prong. The Petitioner further asserts that the Acting Director did not provide an analysis of the evidence in the record or describe its deficiencies.

In addressing each prong of the framework under *Matter of Dhanasar*, the Acting Director's decision lists the potential factors to be considered but does not apply any factors to the Petitioner's evidence or explain why the evidence was insufficient to establish eligibility under each prong. The Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Here, the Acting Director did not adequately explain how the evidence in the record led to the determination that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest.

The contradictory statements regarding the second prong of the *Dhanasar* framework in the RFEs, and whether the Petitioner had established that she is well-positioned to advance her proposed endeavor, limited her ability to address any deficiencies in the evidence in the record. Further the lack of detail in the denial notice did not give the Petitioner a sufficient opportunity to prepare a substantive appeal. Therefore, we will withdraw the Acting Director's decision and remand the matter for further consideration.

If appropriate, on remand the Director may issue a Request for Evidence or Notice of Intent to Deny. The Director must then issue a new decision, addressing all the relevant evidence to decide the merits of the Petitioner's claim of eligibility for a national interest waiver.

III. CONCLUSION

In concluding that the Petitioner submitted insufficient evidence to establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest, the Acting Director did not provide sufficient detail to explain the reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i).

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