



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

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

In Re: 30107268

Date: MAR. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a field and operations general manager, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability 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's proposed endeavor to work in the United States as an industrial maintenance expert has national importance and 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 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 dismiss 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. Section 203(b)(2)(B)(i) of the Act.

"Exceptional ability" in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.²

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 a matter of discretion,³ 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Id.* at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, 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. *Id.* at 890.

The third 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. 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 factors 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. *Id.* at 890-91.

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

³ *See 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).

II. ANALYSIS

The Petitioner proposed to work in the United States as an industrial maintenance expert in the areas of electrical, hydraulic, and industrial maintenance.

As indicated above, the 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. *See* Section 203(b)(2)(B)(i) of the Act. The Director determined that the Petitioner is eligible for the EB-2 classification as an individual of exceptional ability, and we agree. The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification's job offer requirement. We conclude that he is not.

The Director determined that the record established the substantial merit of the Petitioner's proposed endeavor and that the Petitioner is well positioned to advance the proposed endeavor. But the Director determined that the Petitioner has not established that the proposed endeavor is of national importance and 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.

On appeal, the Petitioner contends that the Director's decision contains numerous erroneous conclusions of both of law and fact. The Petitioner further claims that the Director erred in finding that his proposed endeavor is not of national importance because he has provided ample evidence to demonstrate that his work as an industrial maintenance expert will have a significant and positive impact on various sectors of the U.S. economy, culture, and welfare.

While the Petitioner claims that the Director's decision contains numerous erroneous conclusions of both law and fact, the Petitioner does not provide specific facts he believes the Director erroneously found or misstated in the decision. The Petitioner also does not specifically cite laws, regulations, precedent decisions, or binding policies that he believes the Director misapplied in the decision. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The Petitioner asserts that his proposed endeavor has national or even global implications with a particular field because its results are widely disseminated to other professionals in the industrial maintenance field. The Petitioner states that while rendering services for various companies, he received the approval of several projects, reduced equipment downtime, trained and motivated his maintenance team, reduced maintenance or operations costs, increased production, increased reliability of the company in the industry, impacted the company's sustainability. The Petitioner claims that the best way to estimate the prospective impact of one's work is by evaluating the individual's past achievements and that the broader implications of his work may be demonstrated by the fact that his contributions have rendered impressive results. The record includes the Petitioner's course and training completion certificates, transcript, resume, acknowledge letters from his former employers, employment and income verification letters from his former and current employers, support letters from his former colleagues, expert opinion letters from professors, professional plan, and photographs of the Petitioner receiving awards from his former employer.

While we acknowledge the Petitioner's past achievements and contributions to his former employers as evidenced by various documents submitted to USCIS, the Petitioner's education, training, work

experience, and professional achievements are relevant under the second prong of *Dhanasar* to support that he is well positioned to advance the proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 890. The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *See id.* at 889.

In *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. *See id.* The Petitioner has not shown how his proposed endeavor to work as an industrial maintenance expert, forming partnerships with institutions and providing guidance on the development of maintenance, electrical and industrial production, and robotics services, would make a significant impact on the industrial maintenance field more broadly rather than benefiting his employers or clients.

In his professional plan, the Petitioner stated that as an industrial maintenance expert, he will distribute his knowledge to his peers, other professionals, and students in the field by conducting lectures, seminars, and workshops, implementing technical skills to carry out projects in this field, and expanding the workforce. However, the record does not show that this undertaking has broader implications in his field, as opposed to being limited to those who participate in his lectures, seminars, or workshops. While the Petitioner's plans to provide lectures, seminars, and workshops have merit, the record does not sufficiently demonstrate that his teaching or instructional activities offer benefits that extend beyond his students or attendees to impact the industrial maintenance field more broadly. Likewise, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See id.* at 893.

The Petitioner also claims that his proposed endeavor in industrial equipment, maintenance, and manufacturing will broadly impact the manufacturing field because his work will prevent interruptions, extend the lifespan of industrial equipment, reduce overall maintenance costs, assure the physical safety of American workers, and reduce potential costs regarding the company's liability. The record contains an article about 2020 trends in industrial maintenance, summary on industrial machinery mechanics, machinery maintenance workers, and millwrights published by U.S. Bureau of Labor Statics, and an article about machinery maintenance.

These articles and industry report provide maintenance issues, the importance of equipment maintenance in the manufacturing field, and general information about industrial machinery mechanics, machinery maintenance workers, and millwrights. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the specific endeavor that the foreign national proposes to undertake. *See id.* at 889. As such, the Petitioner must demonstrate by a preponderance of the evidence that his proposed endeavor to work as an industrial maintenance expert is of national importance. While we acknowledge the importance of maintenance in the manufacturing field and the significant roles industrial machinery mechanics or machinery maintenance workers play in this field, the Petitioner has not shown that his proposed endeavor would impact the manufacturing field more broadly rather than benefiting his employer or clients.

In addition, the Petitioner states that employment of industrial machinery mechanics, machinery maintenance workers, and millwrights is projected to grow 14% from 2021 to 2023 and that about

53,200 openings for industrial machinery mechanics, machinery maintenance workers, and millwrights are projected each year over the decade. The Petitioner also states that U.S. manufacturing firms continue to experience a shortage of skilled workers in industrial maintenance. The Petitioner contends that he intends to join forces as an industrial maintenance expert and diminish the talent shortage. The Petitioner previously submitted summary on industrial machinery mechanics, machinery maintenance workers, and millwrights published by U.S. Bureau of Labor Statics, 2021 United States manufacturing facts, an article about a talent shortage in the maintenance industry, an article about tackling an industrial maintenance technicians shortage, and an article about transforming society's perception of maintenance.

While the industry reports and articles highlight talent shortages in the maintenance industry and in the manufacturing field, the U.S. Department of Labor addresses worker shortages through the labor certification process. Therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Dhanasar*, 26 I&N Dec. at 885.

Furthermore, the Petitioner asserts that his proposed endeavor has a significant potential to employ U.S. workers or has substantial positive economic effects because his work will result in accelerating the production and robotization of production lines, achieving better productivity and quality, promoting efficiency, improving the economy, creating more jobs, increasing the overall tax revenue of the United States, and substantially impacting several business sectors in the country. The Petitioner explained in his professional plan that as a professional in electrical and automation systems, he will perform functions within several sectors, such as automotive, metallurgy, residential, and electronics, from the elaboration of technical drawings and logic diagrams to the calibration of machines in the field. He added that he is essential for the automotive industry because he will help companies automate production processes by developing projects, hardware installation, and software programing for "PLC" and robotics.

In *Dhanasar*, we stated that an endeavor that has a significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *See id.* at 890. While we acknowledge the Petitioner's experience in the automotive industry and expertise in electrical and automation systems, he has not offered sufficient information and evidence to support that his employer or clients would employ a significant population of workers in an economically depressed area or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increase in his employer's or clients' revenue attributable to his services as an industrial maintenance expert stands to substantially affect economic activity regionally or nationally. The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

The Petitioner claims that his proposed endeavor will broadly enhance societal welfare or cultural enrichment because his maintenance practices can help extend the useful life of the plant and machinery, minimize the loss due to production stoppages, ensure operational readiness of the equipment required for emergency purposes, minimize workplace hazards and improve safety standards, and help improve the operational efficiency of the plant and the quality of products.

While we acknowledge the importance of maintenance in industrial plants, the Petitioner has not shown how his maintenance practices would enhance societal welfare or cultural enrichment rather than benefiting the industrial plant for which he will provide services as an industrial maintenance expert. As stated above, in *Dhanasar*, we indicated that we look for broader implications of the proposed endeavor and that an undertaking may have national importance, for example, because it has national or even global implications within a particular field. See *Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance.

Lastly, the Petitioner claims that his proposed endeavor will impact a matter that a government entity has described as having national importance or its subject of national initiatives. The Petitioner further states that the Biden administration's 2022 national strategy for advanced manufacturing indicates the national importance of engineering based on a vision for U.S. leadership in advanced manufacturing that will grow the economy, create quality jobs, enhance environmental sustainability, address climate change, strengthen supply chains, ensure national security, and improve healthcare. The Petitioner adds that this vision will be achieved by developing and implementing advanced manufacturing technologies that he can help to further these goals.

As indicated above, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the specific endeavor that the foreign national proposes to undertake. See *id.* at 889. The 2022 national strategy for advanced manufacturing indicates the importance of advanced manufacturing for the U.S. economy, national security, healthcare, and environment. But, for example, the Petitioner has not sufficiently demonstrated how his proposed endeavor as an industrial maintenance expert will help grow the economy, create quality jobs, enhance environmental sustainability, address climate change, strengthen supply chains, ensure national security, or improve healthcare. The Petitioner has not shown that his proposed endeavor would impact the U.S. economy, national security, healthcare, or environment more broadly rather than benefiting his employer or clients in the areas of electrical, hydraulic, and industrial maintenance. As such, he has not shown that the prospective impact of his proposed endeavor rises to the level of national importance. Unfortunately, without sufficient documentary evidence of its broader impact, the Petitioner's proposed work does not meet the national importance element of the first prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently demonstrate the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not established eligibility for a national interest waiver. Therefore, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, would serve no meaningful purpose, and we will reserve these issues for future consideration should the need arise.⁴

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver because he has not shown that his proposed endeavor is of national importance.

The appeal will be dismissed for the above-stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.