



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

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

In Re: 19978178

Date: MAY 09, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a recruitment consultant, seeks second preference 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 EB-2 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 Petitioner did not qualify for classification as an advanced degree professional or an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is an advanced degree professional and is eligible for a national interest waiver. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines an advanced degree to mean the following:

Any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the individual must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) sets forth the following criteria an individual must meet in order to qualify as a professional holding an advanced degree:

(A) An official academic record showing that the individual has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the individual has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the individual has at least five years of progressive post-baccalaureate experience in the specialty.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.³

II. ANALYSIS

The Director found that the Petitioner did not have an advanced degree or a foreign equivalent baccalaureate degree followed by at least five years of progressive experience in the specialty under 8 C.F.R. § 204.5(k)(3)(i) and did not meet at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii).

A. Evidentiary Criteria for Advanced Degree

The Petitioner in this case earned a foreign baccalaureate degree in physics from the University of [REDACTED] in the United Kingdom. The Director determined that this degree is the foreign equivalent to a United States baccalaureate degree in physics but found the Petitioner's more than 10 years of experience as a recruitment consultant was not related to the field of physics. Here, the Petitioner indicates his specialty is in recruitment consultancy, he has more than five years of progressive experience in this specialty, and he possesses a foreign equivalent to a United States baccalaureate degree as required under 8 C.F.R. § 204.5(k)(3)(i)(B). We will therefore withdraw the Director's finding that the Petitioner does not qualify as a member of the professions holding an advanced degree and instead find the Petitioner has established that he is a member of the professions holding an advanced degree.

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

B. Exceptional Ability

Since we find the Petitioner is a member of the professions holding an advanced degree, we will also withdraw the Director's finding that the Petitioner is not an individual of exceptional ability and need not make a determination regarding his qualification as to this category.

C. National Interest Waiver

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that his proposed endeavor in the United States is to continue working for [REDACTED] as a recruitment consultant specialized in "the executive talent markets in [REDACTED] in Europe, the Middle East, Africa, and North America." He stated he "seeks to improve the economy through the recruitment and placing of leadership talent into energy companies responsible for the production, refining, transportation, distribution, transmission and sales of affordable energy and which supports the U.S.'s goal of energy independence." In addition, the Petitioner stated his endeavor will improve the United State's economy "by increasing exposure to and possibility of new business opportunities... and by ensuring that the United State's energy companies have the most capable and proven leadership that will promote efficiency, competitiveness, safety, and profitability." The Petitioner provided evidence that he had a respected career as a recruitment consultant and received recognition from his peers regarding various projects he completed over the course of his career as well as praise from executives he recruited.

The record includes articles about a shortage of [REDACTED] professionals in the United States. In addition, the Petitioner provided industry reports and articles indicating forecasts of market growth in the [REDACTED] industry as well as the benefit of the [REDACTED] industry to the U.S. economy. The record therefore supports the Director's determination that the Petitioner's proposed work as a recruitment consultant in the [REDACTED] industry has substantial merit.

In determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has 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." *Id.* at 890.

In his appellate brief, the Petitioner points to his background, education, work experience, and specialized training in his field. The Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the

foreign national.” *Id.* at 890.⁴ The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work.

At the time of filing, the Petitioner was employed by [REDACTED]. On appeal, the Petitioner argues his proposed endeavor to continue working for his employer as a recruitment consultant is of national importance as its “broader implications will enable a broad range of companies in the nationally important [REDACTED] industry to act on their own operational freedom to build capacity, strengthen the ability to execute strategies necessary to build a strong, versatile and expanding industry which improves the U.S. economy.” Additionally, the Petitioner argues the endeavor “also provides a critical service for this industry in locating and hiring qualified talent, a pressing and urgent necessity in the industry which increases US competitiveness.” The Petitioner provided testimonial letters from his employer, clients, and executives he recruited stating their recruitment created jobs, grew new opportunities for expansion, and could “bring new businesses and offices to the US creating new opportunities for employment and better wages for US workers” as well as “strengthening the [REDACTED] industry by building capacities and resiliency which impacts the US economy and increases US competitiveness in the energy sector.” While the Petitioner has a record of success in his career and his colleagues attest to his recruitment abilities and business acumen, this evidence is not relevant to the consideration of whether the Petitioner’s proposed endeavor has national importance as it does not detail the “potential prospective impact” of his work.

With respect to the Petitioner’s proposed employment with [REDACTED], he submitted an opinion letter from [REDACTED], stating that the United States is facing a critical shortage of technical, engineering, and executive talent and the Petitioner’s geographic specialty in recruitment is nationally important due to a complex business environment.⁵ However, the Petitioner has not provided documentary evidence that support these conclusions. While the Petitioner has provided articles indicating some executive level shortages in the [REDACTED] industry, these do not, by themselves, indicate the Petitioner’s recruitment of executives and high-level leadership for [REDACTED] targets or addresses a critical shortage to an extent it would involve national importance rather than benefitting his employer and its business clients. Additionally, the Petitioner did not provide documentary evidence indicating his recruitment consulting activities would impact the [REDACTED] industry or the Petitioner’s recruitment consultant field more broadly rather than benefiting his employer or their clients. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s proposed employment does not meet the “national importance” element of the first prong of the *Dhanasar* framework.

⁴ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

⁵ The Petitioner indicated his geographic specialty encompasses the [REDACTED] in Europe, the Middle East, Africa, and North America.

The Petitioner argues on appeal that his proposed endeavor “has the ability to employ significant US workers, and that it has other economic benefits.” However, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation as he has not submitted documentation to support his assertions. Without information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Although he relies on his past work, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not shown eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.