



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

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

In Re: 20235099

Date: MAY 26, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an avionics engineer, 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 qualified for classification as a member of the professions holding an advanced degree, but that she 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 additional evidence and a brief asserting that she 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.

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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, 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.

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

¹ 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).

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.²

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that she plans to work "in the field of avionics engineering, providing my services to U.S. companies in the areas of aircraft maintenance, repair and overhaul, aircraft cabin management systems, training of new technical professionals, electromechanical aircraft maintenance, and problem troubleshooting." She stated that she intended "to continue working as an Avionics Engineer with multinational companies in the U.S." and to "provide expert technical services to U.S. companies."

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding her proposed endeavor in the United States. In response, the Petitioner asserted that her undertaking involves aviation maintenance and development, as well as improving aircraft systems, to "make flying a safer and pleasurable experience to all customers." She explained that she intended to identify problems, find safe and economical solutions to improve aircraft availability and customer satisfaction, help grow a company's aviation portfolio, and boost activities in the industry that will benefit U.S. companies and the national economy. The Petitioner also indicated that she planned to manage teams and support "business development in U.S. aviation engineering projects." She further stated:

I intend to continue working in Aviation Industry. I plan to continue working my way up on the engineering department and thus acquire more skills and knowledge of all aircraft new systems. I have plans to provide training to young people, especially women, to inspire them to work in the aviation field. . . . I want to motivate the new generation, especially young girls interested in aviation engineering and maintenance as a career. I plan to create a project called Young Techs (similar to the Young Eagles Program) to encourage them to join the aviation field. I want to create ties with North Carolina public schools and begin to pave ways for those students to gain valuable exposure to the aviation world, give them the training and time, and get them into the industry with a good job.

. . . .

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

I am also working and planning on starting my own business to provide specialized avionics support to aircraft. . . . If my team can save time to release an aircraft from an Aircraft on Ground event, it will increase aircraft availability along with customer satisfaction, and impacting in new aircraft and parts sales with more jobs being created to support the aircraft industry.

The Petitioner submitted recommendation letters from colleagues who discuss her technical knowledge and avionics experience.³ For example, [REDACTED] an aviation consultant, stated that the Petitioner “has always been superior to other support engineers at the companies she worked for, and has a very thorough troubleshooting skill in avionics, electrical and mechanical systems.” Additionally, [REDACTED] a chief pilot and fleet manager, asserted that the Petitioner’s “extensive experience in product development, field support, and customer relations emerged and was evidenced by her excellent transit in all fields of knowledge in aviation, thus providing timely and assertive problem-solving even when faced with the most complex issues.” Likewise, [REDACTED] an aviation maintenance technician, indicated that the Petitioner “is a competent and responsible professional” and “one of the best I have met over my 18 years’ experience in aviation.” [REDACTED] further noted that the Petitioner “has demonstrated to be very sharp and knowledgeable when it came to aircraft, and its systems. I have been working with her on various projects and have always been impressed with her technical background and determination.” The Petitioner’s avionics skills, knowledge, and experience in her 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. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

The record includes information about the U.S. aerospace industry, the aerospace industry’s effect on the U.S. economy, the tightening supply of aircraft mechanics and avionics technicians, and a strong COVID recovery’s contribution to the aircraft mechanic shortage. In addition, the Petitioner provided articles discussing engineering as a contributor to economic growth, the benefits of the aerospace industry to the United States, the North American pilot shortage, the aircraft manufacturing industry outlook, the reasons aviation growth is outpacing labor capacity, and immigrants’ contributions to U.S. growth and prosperity. She also submitted information about the aviation industry’s value to the global economy, the aviation maintenance personnel shortage, the decline in mechanics in U.S. commercial industry, the shortage of airframe and powerplant mechanics, the effect of immigrants on the business community and the U.S. economy, and solutions to the U.S. aircraft mechanic shortage. The record therefore supports the Director’s determination that the Petitioner’s proposed work has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of her proposed endeavor. The Director stated that the Petitioner had not shown that her undertaking stands to “sufficiently extend beyond an organization (the company/employer) and its clients to impact the industry or field more broadly.” The Director also indicated that the Petitioner had not demonstrated that her proposed work offers “national or even global implications or substantial positive economic effects related to the aviation industry that would be considered commensurate with national importance.”

³ While we discuss a sampling of these recommendation letters, we have reviewed and considered each one.

In her appeal brief, the Petitioner argues that her proposed endeavor stands to “substantially enhance the U.S. business and automotive industry and the national economy.” She claims that her undertaking “prioritizes U.S. interests by contributing to the productivity and enhancement of nationally important economic sectors, such as aviation engineering.” In addition, the Petitioner asserts that “the national urgency of [her] proposed work is further evinced within the industry’s current, and rising, skills gap.” She contends that “[t]he steep shortage of engineering professionals further emphasizes the urgency, and national importance, of [her] work and career plans in the U.S.”⁴ The Petitioner also maintains that her endeavor “will support U.S. aviation industry in developing a competitive edge in both national and international markets – this will push the nation to achieve whole new layers of productivity, affecting economic and commercial interests.” In addition, she states that her undertaking “will have broad implications in the aviation field, as her national and international activities relate to a matter of national importance and impact, particularly because of the ripple effects upon communities and citizens of the United States.” Moreover, the Petitioner indicates that her proposed work improves “the overall financial health of Americans through increased revenue, employment of U.S. workers, contribution to the country’s gross domestic product, and an optimal investment environment.”

In determining national importance, the relevant question is not the importance of the field, industry, 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.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s statements reflect her intention to provide valuable avionics engineering services for her future U.S. employer or her company’s clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her future employer or her company and its clientele to impact the engineering field, the aviation industry, or the U.S. economy more broadly at a level commensurate with national importance.

With regard to the Petitioner’s assertion that she plans to train young people and women to work in the aviation field (through Young Techs and North Carolina public schools), the record does not show that her proposed education programs offer broader implications for her field, as opposed to being

⁴ Regarding this issue, the Petitioner states that her endeavor will “fill a gap within the specialized and highly selective field of engineering – specifically serving the aviation sector.” We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

limited to those who participate in her training sessions. While the Petitioner's plans to provide training services have merit, the record does not demonstrate that her instructional activities offer benefits that extend beyond her trainees to impact the aviation field or her industry 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. *Id.* at 893.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from her aviation 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.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her 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 she has not established she 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.