



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

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

In Re: 23376544

Date: NOV. 23, 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 civil 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 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 additional documentation and a brief asserting that he is eligible for a national interest waiver.<sup>1</sup>

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

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<sup>1</sup> We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b)

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 discretion<sup>2</sup>, 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 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)

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<sup>2</sup> 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).

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.<sup>3</sup>

## II. ANALYSIS

The Director found 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 his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner initially indicated that he intended to continue “working with an American engineering firm where I will develop strategic partnerships involving new business in the U.S. in order to help grow a company’s engineering portfolio. I will provide indispensable guidance regarding large scale projects, involving construction and engineering.”<sup>4</sup>

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor. For example, the Petitioner was informed he may submit “a plan describing how [he] intends to continue his . . . work in the United States”; “a detailed business model”; “correspondence from prospective/potential employers, clients or customers”; and “documentation reflecting feasible plans for financial support.”<sup>5</sup>

In response, the Petitioner asserted that he plans “to serve in a civil engineering field through my company [REDACTED] [REDACTED] is a real estate development company that will be registered as a limited liability company in the state of Texas. The company will offer consulting and remodeling services while building cash reserves for its building projects.” He further stated: “The company will then begin remodeling distressed homes for resale and sourcing properties in and around the [REDACTED] area for building affordable, single-family homes and townhouse units with eco-conscious materials that offer modern, fresh designs.” The Petitioner also indicated that he intended “to serve the public sector and small businesses and aid them in expanding their operations across the U.S. I will . . . help companies as a cost supplier and contractor, providing cost effective products that can result in a significant cost reduction in infrastructure investments, especially as solar energy is a substantial part of the government infrastructure plan.”

The Petitioner submitted the business plan for [REDACTED] his proposed real estate development company, which states that his business “will capitalize on the growing demand for housing and bring much-needed affordable options to homebuyers in need.” This business plan includes industry and

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

<sup>4</sup> The Petitioner provided work agreements for his services as an assistant project manager with [REDACTED] (May 2018), as a project manager with [REDACTED] (June 2018), and as a construction manager with [REDACTED] (July 2018). In addition, his appellate submission includes an April 2021 “Independent Contractor Agreement” with [REDACTED]. As the Petitioner 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 these positions 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.

<sup>5</sup> Such documentation is helpful in identifying the Petitioner’s proposed endeavor and therefore it has relevance under both prongs one and two of the *Dhanasar* framework.

market analyses, information about his proposed company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that [ ] will employ six personnel in year one, eight in year two, and eleven in years three through five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers sales projections of \$838,000 in year one, \$1,665,600 in year two, \$2,648,720 in year three, \$3,238,464 in year four, and \$3,866,157 in year five, he did not adequately explain how these sales forecasts were calculated.

The Petitioner also presented recommendation letters from colleagues who discuss his project management skills and construction projects.<sup>6</sup> For example, [ ] director of operations with [ ] stated that the Petitioner's "civil engineering background and extensive experience managing architects and engineering teams, while navigating municipality and fire department requirements on complex projects have been fundamental to the expansion of [ ] and office building at [ ] grounds in [ ] TX." Additionally, [ ] regional manager with [ ] asserted that the Petitioner "oversaw and led field construction activities in a large worksite, a multifamily apartment complex with 338 apartments, divided into 5 different buildings in [ ] Texas. Without [the Petitioner's] professionalism or responsible attitude, this project would not have been as successful."

Furthermore, [ ] vice president of construction at [ ] indicated that the Petitioner "worked as an Assistant Superintendent and Assistant Project Manager. . . . Within a short amount of time, [the Petitioner] proved to be a high level-thinker and expert in the field . . . . Specifically, [the Petitioner] is a very responsible and diligent person, which translates well into both positions he held for [ ] Likewise, [ ] vice president of project management with [ ] stated that the Petitioner "was responsible for accurately estimating new and ongoing construction projects. In addition, he assisted project managers assessing the blueprints to interpret and calculate all the project components, comparing contractors/vendors' quotes and project specifications to determine the costs to achieve the project goals." [ ] further asserted that the Petitioner "used his analytical skills and on-site experience to help solve problems, reach the common goal, and collaborate with the company's success."

The aforementioned letters from [ ] [ ] [ ] and [ ] discuss the Petitioner's skills, knowledge, and prior work in his field, but these factors 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 he proposes to undertake has national importance under *Dhanasar*'s first prong.

The record includes information about the occupational outlook for civil engineers, the projected increase in civil engineering jobs, construction industry growth trends, the projected shortfall in Americans trained in science and engineering, foreign-born scientists and engineers in the U.S. economy, and the severity of the U.S. STEM worker shortage. In addition, the Petitioner provided articles discussing the role of construction in national development, the value of construction to state economies, the skills gap in manufacturing, transformation efforts aimed at engineering functions, the

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<sup>6</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

talent shortage in the integrated circuit industry, engineering's contribution to economic growth, the U.S. science and engineering workforce, the U.S. engineering talent shortage, foreign-born STEM workers in the United States, immigration as a solution for addressing the U.S. STEM worker shortage, immigrants' positive impact on the business community and U.S. economy, highly skilled immigrants as contributors to economic growth, real estate's impact on the U.S. economy, and the benefits of real estate investment. He also submits information on appeal about the framework for the Build Back Better Act, the Biden Administration's plan to ease the burden of housing costs and boost affordable housing, the housing market's role in the U.S. economy, housing insecurity and the shortage of affordable homes, housing affordability in Texas, the shortage of affordable rental homes in Texas, the increase in U.S. home prices, and construction backlogs and affordability as contributors to the U.S. housing shortage. The record therefore shows that the Petitioner's proposed endeavor has substantial merit.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director stated that the Petitioner had not shown that his undertaking offers "wider implications" beyond his employer and its clientele, or otherwise provides "substantial positive economic effects for the nation." The Director also indicated that the Petitioner had not demonstrated that his proposed work stands to "affect the regional or national economy more broadly."

In his appeal brief, the Petitioner asserts that the Director's RFE was flawed because it did not ask for "information related to the first prong" of the *Dhanasar* framework. Nonetheless, the Petitioner's response to the RFE included detailed information and evidence regarding his proposed endeavor. We note that the Director may, as a matter of discretion, request additional evidence if the record does not establish eligibility, but he is not required to do so. See 8 C.F.R. § 103.2(b)(8). Regardless, the Petitioner has had an opportunity to address the Director's first prong analysis on appeal, and we review the record on a *de novo* basis.

The Petitioner argues that his "company [redacted] will contract with other companies, such as [redacted] and [redacted] . . . to provide a diversified construction business with a focus on affordable housing." He states that his company's "business plan contains detailed information on how the Petitioner plans to impact the [redacted] area by providing affordable housing solutions." The Petitioner also points to the information he provided relating to Biden Administration initiatives (such as the Build Back Better framework) and to the necessity for affordable housing investment. In addition, he cites findings from the National Low Income Housing Coalition indicating a systematic shortage of affordable housing for extremely low-income renters. The Petitioner further asserts that his proposed endeavor stands to significantly benefit the U.S. construction industry "in terms of improving the U.S. housing market and the national economy. These impacts will in turn result in the increase in consumers' willingness to spend and invest into property and real estate."

With the appeal, the Petitioner offers a letter of support from [redacted] president at [redacted] [redacted] pointing to the affordable housing gap in the United States.<sup>7</sup> He contends that "the U.S. Government has prioritized creating more affordable housing as an important national goal

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<sup>7</sup> The appellate submission includes information about [redacted] and its housing projects.

worthy of pursuit” and that the Petitioner’s proposed endeavor assists [redacted] in increasing its “ability to undertake new projects . . . that will benefit the low- and middle-income segments of the U.S. housing market.” [redacted] further states: “[W]e continue to wish to hire [the Petitioner] to be a project manager with [redacted] . . . I can guarantee that from our business alone he would have sufficient work to meet his year one targets of gross revenues of \$800,000 and employing 6 workers.” The letter from [redacted] however, does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner’s proposed work offers broader implications in the civil engineering field, the U.S. construction industry, or the U.S. housing market that rise to the level of national importance.

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 his work. While the Petitioner’s statements reflect his intention to provide valuable construction, engineering, consulting, remodeling, and project management services for his company and U.S. employers (such as [redacted] [redacted], [redacted], and [redacted]), he has not offered sufficient information and evidence to demonstrate that the prospective impact of his 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 Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and U.S. employers or their clientele to impact the civil engineering field, the construction industry, the housing market, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, 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. Specifically, he has not shown that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Texas or the United States. While the sales forecast for [redacted] indicates that the Petitioner’s company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees and that his endeavor will contribute “to the local economy through the creation of at least six jobs,” he has not offered sufficient evidence that the area where his company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or real estate development. 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 his 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 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.