



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

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

In Re: 22395029

Date: SEP. 21, 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 visiting scholar and researcher, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business. He also seeks 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that, while the Petitioner established eligibility for the underlying EB-2 immigrant visa classification as a member of the professions holding an advanced degree, the record did not establish that a waiver of the classification's job offer requirement would be in the national interest. On appeal, the Petitioner asserts that he merits a national interest waiver. He further asserts that the Director misapplied facts, did not consider evidence in the record, and incorrectly interpreted precedent case law.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the decision and remand this matter for the entry of a new decision consistent with the analysis below.

**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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of 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 alien must have a United States doctorate or a foreign equivalent degree.

*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

*Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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). 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions with an advanced degree. The record demonstrates that the Petitioner earned a doctoral degree in economics with a major in industrial relations in Turkey in 2003, which has been evaluated to be the foreign equivalent of a doctoral degree in economics from a U.S. university. The remaining issue to consider is whether the Petitioner has established eligibility under the *Dhanasar* framework.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner submitted evidence that he currently serves as a visiting scholar at the College of Business at [redacted] University in [redacted]. In his personal statements, the Petitioner describes his proposed endeavor as conducting research in the fields of general management, knowledge management, supply chain management and healthcare management, “to analyze how organizations can gain sustainable competitive advantage and how employees can contribute to this process.” He also describes his future research plans on the topics of knowledge sharing, innovation and knowledge utilization, and diversity management. He proposes to use this research to help the U.S. economy by designing “unique knowledge management systems for use in small businesses to enhance their competitive advantages in the market, which will ultimately foster continued innovation, better customer satisfaction, and supply chain management in small businesses as a whole.”

To support his personal statements, the Petitioner submitted a letter of recommendation and three advisory opinions from other researchers in the field of business and health management, as well as evidence of his peer-reviewed publications and citations. The letter of recommendation is from [redacted] professor in the Department of [redacted] Management at [redacted] University, Turkey. [redacted] describes the Petitioner’s research contributions to the field of business management and discusses the importance of his past research, mainly of businesses and industries in Turkey, on measuring customer satisfaction to improve service quality and cost management in hospitals.

The Petitioner also provided three independent advisory opinions, written by:

- [redacted] professor of marketing and international business at [redacted] University, [redacted]
- [redacted] professor of marketing and international business at [redacted] College; and
- [redacted] professor of hospitality and tourism at [redacted] University, School of Business.

Each of the advisory opinions further discusses the importance of global business competition to the American economy and how the Petitioner's continued research will allow U.S. businesses to improve performance and gain a strategic advantage in the global economy.

To demonstrate the potential national importance of his research, the Petitioner submitted evidence of its implications for the United States. This included information on economic growth programs from the United States Agency for International Development, and statistics of the U.S. percentage share of the global economy taken from the website, "Investopedia.com." The Petitioner also provided information from the website of the Office of United States Trade Representative, Executive Office of the President, describing small to medium enterprise businesses, the focus business size of his proposed endeavor, as "the backbone of the American and European economies."

Upon review of the initial filing, the Director issued a request for evidence (RFE), stating that the record did not "provide insight as to what [the Petitioner] intends to do as a [professor] and how his intentions are of substantial merit and national importance in the United States." In the RFE, the Director noted that the record also did not establish that the Petitioner was well-positioned to advance the proposed endeavor or that it would be beneficial to the United States to waive the requirement of a job offer.

In response to the RFE, the Petitioner submitted additional evidence of his publications and citations to his work. He submitted multiple scholarly articles citing his research and discussing its application in the field of business management. The articles describe how the Petitioner's research has supported the work of others in the study of knowledge management, organizational performance, supply chain management, service quality, and human resource competency. He also submitted journal articles to demonstrate that his proposed endeavor supports the goals of the United States government. The articles describe the importance of knowledge management for small businesses and the healthcare industry in the United States, the impact of supply chain management and U.S. employment, and the government's desire to focus on diversity in the workforce.

The Director denied the petition. He concluded that the evidence demonstrated that the Petitioner met the second prong of the *Dhanasar* framework, in that he was well positioned to advance the proposed endeavor. However, the evidence did not establish that he met the first and third prongs - that the proposed endeavor had substantial merit and 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.

Regarding the substantial merit of the Petitioner's proposed endeavor, the Director stated in his decision that, "beyond the general assertion that the Petitioner intends to continue his research in the

field of management, the description of his endeavor lacks specifics into what he intends to do beyond his research.” The Director cites only to the Petitioner’s personal statements and does not reference, analyze, or appear to consider the supporting materials submitted with the initial filing or in response to the RFE.

Regarding the proposed endeavor’s national importance, the Director again cites only to the Petitioner’s personal statement, and states that he “did not provide evidence beyond his publishing record as to how his work will have significant or substantial impact on the national interest of the United States.”

The Director did not address or analyze all of the evidence in the record or explain how this evidence was insufficient to establish the Petitioner’s eligibility. This includes the accompanying brief from the Petitioner’s counsel, the letter of recommendation, the advisory opinions, and other evidence submitted to demonstrate national importance of the Petitioner’s proposed endeavor. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994)(finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the Director’s decision based on this deficiency. On remand, the Director should review the entire record in considering whether the Petitioner’s proposed endeavor has substantial merit within the *Dhanasar* framework and provide an analysis of the factors considered in making his decision.

In addition, although the Petitioner’s current research may shed light upon and support his proposed endeavor, the *Dhanasar* decision is clear that it is the potential of the prospective endeavor which is considered under the first prong.<sup>1</sup> Therefore, on remand, the Director should evaluate the proposed endeavor’s potential prospective impact as stated in the record to determine whether it is of national importance.

#### B. Whether on Balance it Would be in the National Interest to Grant a Waiver

In concluding that it would not be in the national interest to grant a waiver of the job offer requirement, and thus waive a labor certification, the Director states that the evidence of record is insufficient. However, he does not cite to any specific evidence that the Petitioner submitted or describe how that specific evidence is insufficient. On remand, if the Director determines after reconsideration and analysis that the Petitioner meets the first two prongs, the Director should evaluate the Petitioner’s statements and evidence in support of the third prong. Upon a complete review of the entire record, the Director should provide a full and complete analysis of whether, on balance, it would be in the national interest to grant a waiver of the labor certification. The Director should consider factors such as, whether a labor certification would be impractical, whether the U.S. would benefit from the Petitioner’s proposed endeavor, whether the national interest in the Petitioner’s proposed endeavor is sufficiently urgent, and whether the proposed endeavor has the potential for job creation.

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<sup>1</sup> *Dhanasar* at 889 (“In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.”)

### III. CONCLUSION

The Director did not address all of the evidence in the record and fully explain the specific reasons for denial in his decision, as required by 8 C.F.R. § 103.3(a)(i). Therefore, we are remanding the petition for the Director to consider whether the Petitioner has established, under all three prongs of the *Dhanasar* analytical framework, whether a waiver of the requirements of a job offer, and thus a labor certification, would be in the national interest.

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