



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

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

In Re: 22651610

Date: FEB. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner qualifies for classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. The Director further concluded that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. The regulations define an advanced degree as “any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate.” 8 C.F.R. § 204.5(k)(2). Additionally, 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.” *Id.* 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.

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).<sup>1</sup> *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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 noncitizen 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 noncitizen. 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 noncitizen’s qualifications or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen’s contributions; and whether the national interest in the noncitizen’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.<sup>2</sup>

## II. ANALYSIS

The Director found that the record does not establish the Petitioner qualifies as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. Specifically, although the Director found that “the [P]etitioner has received the foreign equivalent degree of a U.S. bachelor’s degree in Civil Engineering” and that “a letter written by his partner . . . establishes that he was employed as a CEO for [a civil engineering partnership] from September 2004 to January 2018,” the Director concluded that the record did not establish that the Petitioner holds a foreign equivalent to a U.S. bachelor’s degree and five years of progressive experience in the specialty, as required by 8 C.F.R. § 204.5(k)(2). We withdraw the Director’s conclusion that the Petitioner’s

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

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

degree, academic transcript, and information regarding his employment history in the record do not establish that he has an advanced degree and we find, instead, that the record satisfies the second-preference criterion at 8 C.F.R. § 204.5(k)(2). However, as discussed above, the Director further found that the record does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, although the Director found that the “proposed endeavor has substantial merit,” he found that “the [P]etitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly” or would have “significant potential to employ U.S. workers or otherwise offer[] substantial positive economic effects,” thus not satisfying the national importance aspect of the first *Dhanasar* prong. See *Dhanasar*, 26 I&N Dec. at 889-90.

Initially, the Petitioner described the endeavor as a plan “to continue my career working with an American engineering firm where I will develop strategic partnerships involving new businesses in the U.S. in order to help grow a company’s engineering portfolio.” Specifically, the Petitioner asserted that he “would love to work extensively, as I did in Brazil, in the managerial and procurement aspects of the constructive process.” The Petitioner generally asserted that his endeavor will result in the following:

- U.S. job creation and tax revenue;
- Recommending changes to policies or procedures to improve operations, planning budgets for contracts, equipment, and supplies, in addition to monitoring the safety of equipment and facilities to ensure that they comply with any government laws and regulations; and
- Overseeing technical maintenance of industrial, commercial, or government buildings.

In response to the Director’s request for evidence (RFE), the Petitioner supplemented his career plan, stating that he “opened two companies and started work in the area of [c]ivil [c]onstruction, which can benefit society and the U.S. economy at large.” The Petitioner further asserted that his companies “can contribute to the United States’ socioeconomic needs, such as increasing access to affordable civil construction services, building a partnership, and working collaboratively with architects, engineers, suppliers, and local officials to ensure timely and budget-friendly completion of a project.”

As noted above, the Director acknowledged the Petitioner’s career plan but found that he “has not shown his proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly.” The Director further found that the record does not demonstrate “that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects . . . contemplated by *Dhanasar*.”

On appeal, the Petitioner asserts that the Director “did not give due regard to . . . [i]ndustry [r]eport and [a]rticles, demonstrating the national importance of the [Petitioner’s] proposed endeavor; as well as the steep shortage in the U.S. professionals with her [sic] profile in the field.” The Petitioner also asserts that “there is no doubt that [he] would work in the United States in an area of national importance, capable of producing substantially positive effects, due to the ripple effects of his professional activities within the private business sector.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The Petitioner’s reference on appeal to generalized industry reports and articles is misplaced. None of the industry reports and articles about civil engineering in general in the record specifically address the Petitioner, his proposed endeavor, and how the particular endeavor may have national importance. *See id.* Similarly, the Petitioner’s assertion on appeal that he will “work in the United States in an area of national importance” is misplaced because the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” *Id.* at 889.

We acknowledge that the record establishes that the Petitioner co-manages or co-directs two Florida-based paving companies. However, the record does not provide sufficient information regarding the scope of the companies’ planned operations, the number of employees and types of positions the companies intend to hire, the locations in which the employees would work, and other information relevant to whether the companies would have significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *See id.* at 889-90. The record also does not elaborate on how the Petitioner’s companies may, for example, have certain improved processes or advances that would have broader implications within the field of civil engineering. *See id.* The record supports the conclusion that the Petitioner’s business activities would benefit himself, his companies, and its clients but, without more detailed information, it does not establish that the proposed endeavor would have broader implications to the field or resulting in substantial positive economic effects. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagambashad*, 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 alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.