



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

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

In Re: 24443524

Date: JAN. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an engineer, seeks employment-based second preference (EB-2) 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established eligibility under the Dhanasar framework. 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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).<sup>1</sup> Meeting

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<sup>1</sup> If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>2</sup> We conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>3</sup>, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

## II. ANALYSIS

### A. EB-2 Classification

The Director determined that the Petitioner established eligibility as a member of the professions holding an advanced degree. The Petitioner provided evidence that he studied engineering and earned a foreign Diploma of Licentiate in engineering. The Director reviewed the AACRAO EDGE database to determine whether the Petitioner’s foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit <https://www.aacrao.org/edge>. The database indicates that a Diploma of Licentiate is comparable to a U.S. bachelor’s degree. Therefore, the Petitioner must establish that he possesses at least five years of progressive experience in the specialty to qualify as a member of the professions holding an advanced degree.

As the Director noted, the letter from [redacted] concerning the Petitioner’s employment with [redacted] does “not indicate [redacted] position within the company” and therefore it cannot be determined that [redacted] is an individual with authority to reliably comment on the Petitioner’s employment. Although the letter states the Petitioner worked from August 2003 to June 2014, we conclude that the evidence provided is insufficient to support this claim. In addition to the deficiencies noted above, the letter does not contain a date, letterhead, or any information as to [redacted] professional relationship to the Petitioner. As such, we question the credibility and accuracy of this letter and conclude that it does not sufficiently support a finding that the Petitioner has at least five years of progressive experience in the specialty.

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<sup>2</sup> U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

<sup>3</sup> See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The Petitioner provided letters of recommendation evidencing employment with [redacted] from August 2014 to January 2017; [redacted] from January 2017 to October 2017; and [redacted] from June 2018 to January 2019.<sup>4</sup> Although these letters provide some information about the Petitioner's positions and duties, as well as the writers' authority to comment on the Petitioner's employment, the dates of employment provided do not cover a five-year period. The letters do not contain specific start and end dates for the Petitioner's employment. Even adding the months together in the manner most favorable to the Petitioner, the aggregate time is less than five years. Accordingly, the evidence does not sufficiently establish that the Petitioner has at least five years of progressive experience in the specialty. Therefore, we must withdraw the Director's finding that the Petitioner is a member of the professions holding an advanced degree. In addition, the Petitioner has not asserted eligibility as an individual of exceptional ability, nor has he submitted evidence to support such a finding.

As previously outlined, the Petitioner must show that he either possesses exceptional ability or is an advanced degree professional before we reach the question of the national interest waiver. We conclude that the evidence does not establish the Petitioner is a member of the professions holding an advanced degree or that he meets the regulatory criteria for classification as an individual of exceptional ability. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Nevertheless, because the Director determined that the Petitioner had not established eligibility under the Dhanasar framework and the Petitioner asserts error in that finding, we provide the following additional analysis.

## B. Proposed Endeavor

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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. *Dhanasar*, 26 I&N Dec. at 889. While we do not discuss each piece of evidence, we have reviewed and considered each one.

On the Form I-140, the Petitioner stated that his job title is "engineer." In his affidavit accompanying the petition, he stated that "I seek employment as an engineer in the field of design for manufacturing [(DFM)] of products including [redacted] and [redacted]." He intends to provide expertise and "solutions to DFM firms to significantly decrease a total pre-production cycle and positively impact the US economy as a whole."<sup>5</sup> The Director issued a request for evidence (RFE)

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<sup>4</sup> The Petitioner also provided a letter from a U.S. company, [redacted] however, the letter states that the Petitioner began employment in October 2019. The Petitioner must establish eligibility at the time of filing for the requested benefit and must continue to be eligible for the benefit through the adjudication of it. 8 C.F.R. § 103.2(b)(1). As this employment began after the July 2019 filing of the petition, it cannot serve as evidence of eligibility at the time of filing.

<sup>5</sup> The Petitioner defined Design for Manufacture (DFM) as the "process of designing parts, components or products for ease of manufacturing with the end goal of making a better product at a lower cost."

notifying the Petitioner that, among other deficiencies, the record contained a vague and insufficient description of the proposed endeavor. Although the Petitioner responded to the RFE, the evidence he provided did not include additional detail concerning his specific proposed endeavor. The Director denied the petition, concluding that the evidence did not support how the Petitioner's work extends beyond his employers or how his proposed endeavor has national importance.

The Petitioner provided an overview of DFM and [REDACTED] in addition to articles related to [REDACTED]. While this evidence may establish the substantial merit portion of the first Dhanasar prong, the Petitioner's reliance on such evidence to establish the national importance of the proposed endeavor is misplaced. In determining national importance, the relevant question is not the importance of the 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. Therefore, while we acknowledge the merit and importance of the Petitioner's industry, this does not necessarily establish the national importance of his specific proposed endeavor.

To establish the national importance of his proposed endeavor, the Petitioner emphasized his successful past performance in various positions and the results he achieved for his employers. Like the Director, we conclude that the evidence provided does not substantiate how the Petitioner's past performance extended beyond his employers to impact the engineering field more broadly. The Petitioner emphasized that his work for electrical engineering businesses will increase the amount of business his employer can conduct, enable them to secure larger contracts of a longer duration, which then creates jobs, increases revenue, triggers the flow of money into the economy, and boosts hiring. However, he provided little detail on the size and number of companies for which he will work or the size and number of projects he plans to undertake, nor has estimated the number of jobs or revenue his employment would create. Without additional information about the scale of his proposed endeavor or other details explaining how it will create the claimed impact, the evidence is insufficient to conclude that the implications of his proposed endeavor would rise to the level of national importance. Furthermore, although the Petitioner and his colleagues labeled the Petitioner's expertise, skill, and solutions as "innovative" and "unique," the record does not contain specific or detailed examples to substantiate these labels. Even if the record supported a finding of innovation or uniqueness, the Petitioner has not explained how this would impact the industry or field more broadly, rather than impacting only his specific employer(s) and clients.

The evidenced also emphasized the Petitioner's personal and professional qualifications and the expertise he acquired; however, these factors pertain to the second prong of the Dhanasar framework. The second prong "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong.

On appeal, the Petitioner reiterates his plan to seek employment as an electrical engineer but does not provide additional detail concerning his proposed endeavor.<sup>6</sup> He relies primarily upon the evidence and arguments previously provided without addressing the deficiencies the Director identified.

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<sup>6</sup> Although the Petitioner provided a letter evidencing new employment with [REDACTED] and this employer's interest in promoting the Petitioner to a position of electrical engineer, this employment began after the filing date of the petition.

Accordingly, we conclude that the Petitioner has not sufficiently demonstrated the proposed endeavor's national importance. Therefore, the Petitioner has not established eligibility for a national interest waiver.

### III. CONCLUSION

The evidence does not establish a sufficiently detailed proposed endeavor, nor does it establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of eligibility under the remaining Dhanasar prongs would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any remaining arguments concerning eligibility under the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

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. The appeal will be dismissed for the above stated reasons.

ORDER:     The appeal is dismissed.