



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

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

In Re: 24187241

Date: JAN. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a self-employed petroleum geologist, 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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. 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

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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*).

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 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 of a labor certification, would be in the national interest. Specifically, the Director found that the "proposed endeavor has substantial merit and national importance," as required by the first *Dhanasar* prong, but that the record does not establish that the Petitioner "is well positioned to advance the endeavor or on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification," as required by the second and third *Dhanasar* prongs, respectively. *See Dhanasar*, 26 I&N Dec. at 888-91. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as "coming to the United States to work in the field of [p]etroleum [g]eology." She asserted that she has "12 years of experience and robust background in

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

the field of petroleum and drilling, especially in well drilling control engineering, 3D/2D geological modeling, and positional environment interpretation.” She further noted that she “has been awarded several times for her outstanding research work and projects.” The Petitioner discussed her prior work experience, the petroleum industry in general, and the “national importance of the oil and gas industry in USA.” However, the Petitioner did not elaborate on what the specific endeavor of working in the field of petroleum geology would entail and how the endeavor, rather than the industry in general, would have national importance.

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.

We note that, in addition to the Petitioner’s omission of a description of her proposed endeavor, other documents in the record do not establish what the proposed endeavor would be and how it would have national importance. For example, the record contains a letter of recommendation from the former chief executive officer of [REDACTED] PLC, dated December 2015. The letter, addressed to whom it may concern, attests to why the Petitioner “will be highly recognized in your graduate program” but it does not describe the endeavor the Petitioner proposed to pursue in connection with her Form I-140, Immigrant Petition for Alien Worker, filed in 2020, and how the specific endeavor would have national importance. The record contains similar letters dated November 2015 that also do not address the endeavor the Petitioner proposed to pursue in 2020 and how it would have national importance, as required by the first *Dhanasar* prong. *See id.* at 889-90.

We acknowledge that the record contains more recent letters of recommendation, dated December 2020, from the program manager for digital transformation at [REDACTED] LLC, and from a former coworker at the [REDACTED] Science and Technology Center. The letters assert that the Petitioner’s prior work developing 3D models “became the gold standard for well drilling of [REDACTED] unconventional deposits in [REDACTED] Petroleum group of fields” and “laid ground for offshore exploration and development” in the arctic shelf. We also note that the record contains a letter from a retired petroleum geologist, dated March 2022, that discusses the “potential commercial value of the research publications authored or co-authored by [the Petitioner].” However, the letters do not address what the Petitioner’s specific, prospective endeavor would be and how the endeavor would have national importance, as required by the first *Dhanasar* prong. *See id.* at 889-90.

On appeal, the Petitioner submits a copy of an article published by BBC on its website, dated July 2022, titled “Russia Sanctions: Can the World Cope Without its Oil and Gas?” The Petitioner asserts: “With Russia using its natural resources as a means of leveraging international politics [as reported in the BBC article], increasing domestic natural gas and petroleum production has become a point of strategic importance for the United States.” The Petitioner further asserts that “Russia’s recent invasion of Ukraine” and the information about Russia’s natural resources reported by BBC “support the relevance of [her] education and professional experience in the context of national interest.”

A petitioner must establish eligibility at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Because the events discussed in the article occurred in 2022, after the petition filing date in 2020, it presents a new set of facts that do not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. Moreover, even if the article could establish eligibility, which it does not, the Petitioner does not provide additional information on appeal regarding what her specific endeavor would be and how the endeavor, rather than the petroleum industry in general, would have national importance. Additionally, the Petitioner's references to her education and professional experience in the context of national interest is misplaced. An individual's education and professional experience are material to the second *Dhanasar* prong—whether the individual is well positioned to pursue the endeavor—but they are not evidence of what a prospective proposed endeavor would be and how it would have national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889-91.

For the reasons discussed above, we withdraw the Director's statement that the proposed endeavor has national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she 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. Bagamasbad*, 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.