



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

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

In Re: 33401207

Date: SEP. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 Texas Service Center denied the petition, concluding that the record did not establish 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 pursuant to 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

If a petitioner establishes eligibility for the underlying EB-2 classification as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, they must then demonstrate 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,¹ 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

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner is the founder and chief executive officer for a transportation and logistics company, [REDACTED]. The Petitioner started the company in 2021 and asserts it has already created 100 jobs. The Petitioner established a related online teaching platform for logistics courses and an IT platform to connect independent contractors and trucking companies. The Petitioner's proposed endeavor is to continue working toward the projected expansion of [REDACTED] using technology and sustainability.

A. Substantial Merit and National Importance

The Director determined the Petitioner's proposed endeavor has substantial merit and rises to the level of national importance.

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director indicated the Petitioner's proposed endeavor has substantial merit as the evidence of record demonstrate it is within the field of business, entrepreneurialism, science, technology, culture, health, or education. We concur the Petitioner has demonstrated the substantial merit of his endeavor. We do not concur with the Director's determination that the endeavor rises to the level of national importance but will not further address this issue as we are remanding this matter. As discussed below, the Director's decision contains deficiencies in its analysis with respect to the specific grounds of denial.

B. Well Positioned to Advance the Proposed Endeavor

The Director concluded the Petitioner did not establish he was well positioned to advance the proposed endeavor under prong two of the *Dhanasar* framework. In the denial decision, the Director stated, "[t]he petitioner has not submitted any evidence for the well positioned to advance the proposed endeavor prong and therefore the beneficiary **is not** well positioned to advance his proposed endeavor. ..."

In evaluating whether a petitioner is well positioned to advance a proposed endeavor, we consider factors including, but not limited to: their 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 individual. *Matter of Dhanasar*, 26 I&N Dec. at 890.

On appeal, the Petitioner contends the Director made a factual error in finding the Petitioner did not submit any evidence indicating he is well positioned to advance his endeavor. The record supports the Petitioner's assertion. As noted by the Petitioner on appeal, the record before the Director contained educational records for the Petitioner, a resume, a personal statement, letters of recommendation, a business plan for [REDACTED] and financial documents for [REDACTED]. These documents include evidence related to the non-exclusive *Dhanasar* factors for the second prong listed above.

We concur with the Petitioner that the Director's decision did not recognize and analyze evidence in the record pertaining to whether the Petitioner is well positioned to advance his proposed endeavor. We therefore withdraw the Director's determination on this issue and remand to the Director, in part, to consider the relevant evidence in the record and reassess whether the Petitioner satisfies prong two.

C. Whether on Balance a Waiver Is Beneficial

The Director concluded the Petitioner had not established that, on balance, it would be beneficial to the United States to waive the job offer requirement under the third *Dhanasar* prong.

This prong requires a 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, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. at 890-91.

In its denial decision, the Director determined the record "does not demonstrate the widespread benefits associated with [the Petitioner's] endeavor working as an [e]ntrepreneur in the field of [t]ransportation and [l]ogistics," "does not demonstrate that the [Petitioner's] proposed endeavor may lead to potential creation of jobs," and "does not contain sufficient evidence to demonstrate that the [Petitioner's] proposed endeavor benefits would be beneficial to the United States. The Director did not discuss the evidence weighed in balancing these considerations, including the submitted business plan, which indicates [REDACTED] is currently employing individuals in the scope of its business. In addition, the Director found the Petitioner's endeavor had substantial merit and national importance while simultaneously and inconsistently finding it did not demonstrate widespread benefits or that it would be beneficial to the United States. We therefore withdraw the Director's determination on this issue and remand to the Director, in part, to analyze the relevant evidence of record related to the third prong and reassess whether this prong is satisfied.

III. CONCLUSION

For the above reasons, we withdraw the Director's decision and remand this matter for further consideration and entry of a new decision.

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