



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

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

In Re: 33962257

Date: SEPT. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a project engineer in architecture and construction, 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 Petitioner established that the Beneficiary qualified for EB-2 classification as an advanced degree professional, but did not demonstrate 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

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, 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:

¹ *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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.

Id.

II. ANALYSIS

The Petitioner submitted evidence that the Beneficiary holds the equivalent of a United States bachelor's degree in architectural studies and over five years of progressive experience in her specialty. The Director determined that the Beneficiary qualified for EB-2 classification as an advanced degree professional. We agree.

In its first support letter submitted with the petition, the Petitioner stated the Beneficiary's proposed endeavor is to continue her employment as a project engineer with the Petitioner and engage in "architectural design and execution of complex infrastructure and construction projects to advance U.S. public transportation modernization and expansion and provide the U.S. population with access to safe mobility services and roadway networks, affordable housing, and healthcare facilities."

A. Substantial Merit and National Importance

The first *Dhanasar* 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 determined the Beneficiary's proposed endeavor has substantial merit. We agree. The Director concluded, however, that the Beneficiary's proposed endeavor did not have national importance. The Director reached this conclusion based on several misrepresentations of the record and her determination will be withdrawn.

The Director referenced "several letters of support" that "provide details about the beneficiary's character, skills, and work ethic," but did not establish that she had made "significant contributions to the industry or field of engineer." As the Petitioner correctly asserts on appeal, the Petitioner did not submit letters that discussed the Beneficiary's character, skills and work ethic. Rather, the Petitioner submitted a support letter from the Beneficiary's current supervisor that discusses her experience and contributions to the Petitioner and letters from past employers verifying her employment and listing her job duties. The Director also misidentified the Beneficiary's field as "engineer." Although the Beneficiary is employed as a project engineer, the record shows she works in the field of architecture and construction. The Director's reference to support letters that the Petitioner did not submit and her

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

misidentification of the Beneficiary's field indicate that the Director's conclusion was not based on the record in this case.

The Director also quoted from the Petitioner's letter submitted in response to the Director's request for evidence. The Director misidentified the quote as a statement of counsel and did not consider the statement as evidence. However, the Petitioner's letter explains why the Petitioner believes the Beneficiary's proposed endeavor has national importance and is relevant evidence that merits consideration of the Beneficiary's eligibility under the first *Dhanasar* prong.

At several places in her decision, the Director refers to the Beneficiary as a man although the Beneficiary is a woman. This misidentification further indicates that the Director's determination was not based on the record in this case.

The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the Director shall explain in writing the specific reasons for denial. An officer must fully explain the reasons for denying the petition in order to allow the Petitioner a fair opportunity to contest the decision and our opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director relied on evidence not in the record and misidentified the Beneficiary and her field of endeavor. Consequently, the Director's decision did not provide a sufficient explanation for the reasons for denial and did not provide the basis for a meaningful appeal. Accordingly, the Director's determination that the Beneficiary does not meet the first *Dhanasar* prong will be withdrawn.

B. The Remaining *Dhanasar* Prongs

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the 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 individuals. *Id.* at 890.

The third 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. *Id.* at 890-91.

A decision on whether an individual is eligible for and merits a national interest waiver requires an assessment of the individual's eligibility under each of the three *Dhanasar* prongs. *Id.* at 889. Here, the Director did not make a determination of whether the Beneficiary met the second and third

Dhanasar prongs of showing that she is well positioned to advance her proposed endeavor 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. The Director's decision is incomplete. The matter will be remanded to the Director to complete a full analysis of the Beneficiary's eligibility under all three *Dhanasar* prongs.

III. CONCLUSION

The Director's decision indicates her determinations were not entirely based on the record in this case. Her decision did not sufficiently specify the reasons for denial, did not provide the Petitioner with a meaningful opportunity to contest the decision, and did not provide us with the basis for meaningful appellate review. The Director's decision will be withdrawn and the matter will be remanded for 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.