



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

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

In Re: 33378675

Date: SEP. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a quality assurance (QA) 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 section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding 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 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 dismiss the appeal.

## **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. *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>1</sup> grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- 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 Director determined that the Petitioner is an advanced degree professional and therefore has established eligibility for the underlying EB-2 classification. The Director also determined the Petitioner established he is an individual well-positioned to advance his proposed endeavor, meeting the second prong of the Dhanasar framework for a national interest waiver. However, according to the Director, while the Petitioner established the substantive merit of his proposed endeavor, the Petitioner had not demonstrated that he merits a discretionary waiver of the job offer requirement “in the national interest” because he had not established the national importance of his proposed endeavor under Dhanasar’s first prong, and that on balance waiving the job offer requirement would benefit the United States under Dhanasar’s third prong. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework.

In his initial filing, the Petitioner identified his occupation as the head of [REDACTED] and described the significance and vulnerabilities of software development, the role and duties of head of [REDACTED] and his contributions shaping [REDACTED] processes and methodologies in software development. The Director issued a request for evidence (RFE) seeking, in relevant part, details of what the Petitioner intended to do in the future for the United States. The Petitioner clarified in his response to the RFE, that he proposes to work for U.S. companies, focusing on enhancing software quality across critical sectors, create online courses to educate and expand the [REDACTED] professional community, and continue his open source contributions developing tools that facilitate test automation and knowledge sharing.

The Petitioner submitted documents in support of his national waiver petition, which include: recommendation letters, an article interviewing him, an award by the technology community recognizing his contribution to [REDACTED] his teaching and presentation materials, a document evidencing the downloads of a tool, [REDACTED] he created, an article describing how [REDACTED] works, [REDACTED] related articles he has authored, and government memoranda.

On appeal, the Petitioner submitted a brief and a copy of portions of the USCIS policy manual. In his brief, he asserts that some of his evidence and statements were ignored or misinterpreted by the Director. He discusses the impact of his past work in [REDACTED] and asserts his open source contributions have affected the global [REDACTED] community. The Petitioner also asserts that he has written technical articles in [REDACTED] participated in interviews and conferences, is recognized as an expert in his field, has won an award for his work in [REDACTED] all which evidence that his work has affected large groups of people. The Petitioner asserts that he does not understand how the Director could accept his evidence that he is an expert in the field and not accept that his teaching would have national importance in the United States. The Petitioner also highlights that his work falls within Science, Technology, Engineering, or Mathematics (STEM) fields, which government memoranda evidence is a national priority.

As an initial matter, we address the Petitioner's assertion that some of his evidence and statements were ignored or misinterpreted by the Director, such as his written technical articles in [ ] his participation in interviews and conferences, his award for his work in [ ]. Our review indicates the Director properly considered the relevant evidence. Further, we acknowledge the evidence the Petitioner submitted, which predominantly demonstrates his past experience, work history, and accomplishments within [ ]. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Here, the issue is whether the specific endeavor that he proposes to undertake has national importance under Dhanasar's first prong. We therefore have limited our analysis of the Petitioner's evidence herein to those relevant to our analysis of whether his proposed endeavor is nationally important.

The first prong focuses on the specific endeavor that the foreign national proposes to undertake. *Id.* at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* at 890. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.*

With respect to his proposed endeavor of enhancing software quality across critical sectors, the Petitioner explained in the record below that he is planning to propose his services to U.S. companies in the "most important sectors for national U.S. interests, like healthcare, financial, etc." He stated he would continue working within the healthcare sector by focusing on developing software aimed at mitigating health crises like COVID-19 and enhancing the provision of critical information to healthcare professionals and patients. He adds that he will continue to provide software services with safe data processing to preempt data breaches through rigorous quality assurance processes in the health and financial sectors. On appeal, the Petitioner argues that his past work in [ ] where he improved COVID-19 tests, affected millions of patients in the United States, and his past success protecting data resulting in no data breaches "on [his] watch" similarly affected many people, evidencing national or even global implications within his field.

In support of this endeavor, the Petitioner submitted recommendation letters. One letter by a former employer described the Petitioner's performance significantly improving his company's operational costs. Another described how the Petitioner's software enhancement doubled his company's ability to conduct COVID-19 tests. Neither author of these recommendation letters described whether the Petitioner's solutions were shared or could be shared outside of their respective companies, or provided data substantiating the Petitioner's claims, for example that his improvements affected millions of U.S. patients, and that his proposed endeavor has broader national or global implications in his field. Moreover, the Petitioner speaks only generally about enhancing [ ] in software to mitigate health crisis or preempt data breaches. However, he does not specify how providing his quality assurance software services for a U.S. based company would more broadly impact the field of software engineering, including as it relates to the health industry, beyond his prospective clients and employers. Likewise, he has not shown that his endeavor would have any projected positive U.S. economic impact or job creation at a level commensurate with national importance as set forth in

Dhanasar. Further, while we note that the Petitioner plans to propose his services to U.S. companies in the “most important sectors for national U.S. interests,” the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on “the specific endeavor that the Petitioner proposes to undertake.” *Id.* at 889.

As context for his proposed endeavor of educating and expanding the [ ] professional community, the Petitioner explained in the record below that he has three years of teaching experience in [ ] and is poised to significantly contribute to the [ ] through educational initiatives. He plans to, for example, develop and distribute learning materials, create hands on projects for his students, leverage his extensive professional network to promote his courses. According to the Petitioner, these efforts will support the U.S. economy through tax contributions but also play a pivotal role in nurturing new [ ] professionals, directly benefiting the nation by enhancing its technological workforce and innovation capabilities. In support, the Petitioner included recommendation letters from a former student explaining how the Petitioner’s tutoring helped him successfully implement [ ] tools, an individual highly impressed with his teaching methodology, and an individual who claimed the Petitioner improved his students’ qualifications in the [ ] automation field. The Petitioner also asserted that his students found employment after taking his classes. However, these letters do not demonstrate how his proposed endeavor of educating the [ ] professional community would have any projected U.S. economic impact or job creation. In addition, the Petitioner has not established that the strategies he intends to use in teaching would impact the field of [ ] software/information technology (IT) education more broadly. See *id.* at 893 (stating that while STEM teaching has substantial merit in relation to U.S. educational interests, the record would need to demonstrate that the proposed teaching activities would impact the field of STEM education more broadly to establish their national importance). With respect to the Petitioner’s argument on appeal that because we accepted evidence of his experience we should apply it to analyzing *Dhanasar’s* first prong, the Petitioner’s experience relates to the second prong of the *Dhanasar* framework, which looks to whether the Petitioner is well-positioned to advance his proposed endeavor. *Id.* at 889. To analyze *Dhanasar’s* first prong, we focus on the specific endeavor that the Petitioner proposes to undertake and whether its prospective impact has national importance. Here, the Petitioner has not established through his submitted evidence that his endeavor of educating and expanding the [ ] professional community would result in national or even global implications within his field as contemplated by *Dhanasar*. *Id.* at 890. Nor has the Petitioner provided metrics or data to support his claim that his teaching would support the U.S. economy because it has significant potential for the employment of U.S. workers or will have other substantial positive economic effects, particularly in an economically depressed area. *Id.*

On appeal, the Petitioner asserts his open source contributions affect the global [ ] community, which he says is evidenced by a recommendation letter and documentation of the volume of downloads of his [ ] product. In the record below, the Petitioner explained that he would provide open source contribution by producing more articles and guides on [ ] topics, sharing his knowledge and insights to support the professional growth of others in the field, engage in conferences, meetups, and webinars, contributing to the discourse on [ ] best practices and innovations, and to create automation tools like [ ] and [ ] which are tools he created in the past. According to the recommendation letter, the Petitioner contributed to a software solution that allowed the user to more accessibly pull up a report by using links, which the company integrated into the software’s package. According to the record, the Petitioner’s [ ] tool allows users to bypass a bug for the

program python. The concept behind [ ] allows software testers to fetch emails from [ ] to meet their automated testing requirements. We acknowledge the Petitioner's past accomplishments and success. We have also reviewed the recommendation letter, evidence of the download rate for [ ] and article describing the tool, which demonstrate that the Petitioner's work has impacted individual users. However, the evidence does not explain who is using the referenced tool and how it is being used in the industry to sufficiently demonstrate global or national implications within the software quality assurance field. Similarly, as discussed above, the Petitioner's evidence of his other software fixes did not demonstrate the prospective impact for the field of software engineering or for the nation. Further, the Petitioner does not describe any specific software development plans he has or whether he could build upon his past accomplishments in these areas to evidence national or global implications within the field of software engineering.

The Petitioner further asserts on appeal and in the record below that his proposed endeavor demonstrates his commitment to advancing the [ ] field and contributing to the United States' technologic and educational landscape, which are within STEM fields and a national priority of the United States. The Petitioner cited to the USCIS policy manual and submitted a White House Memorandum on Research and Development Priorities for fiscal year 2024 and highlighted the government's interest in prioritizing pandemic readiness and prevention. He also submitted a 2021 Interim National Security Strategic Guidance document also issued by the White House where the Petitioner highlighted that responding to COVID-19 is within the national security strategy. We agree that USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in STEM areas important to U.S. competitiveness. See generally 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policymanual>. However, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance. *Id.* Many proposed endeavors that aim to advance STEM technologies have substantial merit in relation to U.S. science and technology interests, and sufficiently broad potential implications to demonstrate national importance. *Id.* On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.* Here, the Petitioner has not shown that his endeavor would impact the field of software engineering or software quality assurance education more broadly, thereby advancing STEM technologies and research. Accordingly, the Petitioner has not established the national importance of his proposed endeavor under Dhanasar prong one.

As the Petitioner has not demonstrated the national importance of the proposed endeavor, as outlined above, we reserve the Petitioner's arguments that he has demonstrated the third Dhanasar prong. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); 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

The Petitioner has not met the requisite first prong of the Dhanasar analytical framework and therefore has not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER:     The appeal is dismissed.