



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

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

In Re: 28513067

Date: OCT. 20, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the supermarket industry, 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Nebraska Service Center denied the petition, concluding that, although the Petitioner demonstrated his eligibility for EB-2 classification as a member of the professions holding an advanced degree, he did not establish that a discretionary waiver of the classification's job offer requirement 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision contains factual errors, lacks sufficient analysis and discussion of the evidence in the record, and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Accordingly, 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 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. *See* section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 USCIS may, as matter of discretion, 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

The record supports the Director's determination that the Petitioner qualifies as a member of the professions possessing an advanced degree. In addressing the Petitioner's eligibility for a national interest waiver, the Director determined that he established the substantial merit of the proposed endeavor, but did not demonstrate its national importance, that he is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement.

The record contains a personal statement from the Petitioner describing his proposed endeavor to serve as an owner and senior manager of [REDACTED] a Florida company established in 2019, along with a business plan for this company that he submitted in response to the Director's request for evidence (RFE) in March 2023. The record shows that [REDACTED] was operating a supermarket in Florida at the time of filing, and the Petitioner indicated in his initial statement that he would also be providing advisory services to other businesses in his field. The business plan submitted in response to the RFE detailed the company's five-year plan to expand its supply chain consulting services business in the supermarket and retail sector, while other evidence submitted in response to the RFE indicated that the company's own supermarket remained operational.

The Director concluded that "discrepancies and inconsistencies" in the Petitioner's statements made it "unclear as to what your specific endeavor is." The Director further found that the evidence indicates that the Petitioner "is the manager of [REDACTED], not the owner/founder," noting that "an occupation and the general work performed in an occupation does not constitute an endeavor." Based on these findings, the Director concluded that "[t]he evidence suggests you have no proposed endeavor" and therefore they could not determine "whether your endeavor meets the requirements of the *Dhanasar* framework."

The Director's determination that the record does not describe a proposed endeavor is contrary to the evidence submitted and contrary to the Director's own affirmative determination that the Petitioner established the substantial merit of his proposed endeavor. The Petitioner consistently described his plans to both oversee an existing supermarket business and to provide consulting or advisory services to other businesses in this sector. The Director's unsupported conclusion that the Petitioner has "no proposed endeavor" led to an insufficient analysis of the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework. Accordingly, for the reasons discussed below, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision.

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. *Dhanasar*, 26 I&N Dec. at 889.

Here, the Director acknowledged that the Petitioner submitted a “detailed business plan” but does not meaningfully address the plan’s description of his proposed endeavor and its national importance, or other evidence that addresses the first prong of the *Dhanasar* framework. Nor does the decision address the Petitioner’s specific claims and evidence as to how his proposed work will have substantial positive economic effects and national implications within his field, its potential to broadly enhance societal welfare, and its impact on a matter that a government entity has described as having national importance. These factors are relevant to a determination regarding the potential prospective impact of his work under the *Dhanasar* framework and should be weighed as part of the first prong analysis. In fact, the Director had specifically instructed the Petitioner to address such factors in his response to the RFE, but then failed to give those claims due consideration. While the evidence of record may be insufficient to demonstrate the national importance of the proposed endeavor, the Director’s determination that the Petitioner did not satisfy the first prong was conclusory, did not adequately address the evidence and arguments submitted, and therefore did not sufficiently explain the reasons for denial.

The second prong of the *Dhanasar* framework 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.

In concluding that the Petitioner did not establish that he is well-positioned to advance his proposed endeavor, the Director listed the evidence the Petitioner submitted, which included his academic and professional credentials, a business plan for future activities, evidence that he was already employed by [redacted] at the time of filing (pursuant to an approved O-1 nonimmigrant petition), evidence that he has received awards and media coverage in Venezuela based on his operation of a successful supermarket chain, and recommendation letters from clients and business contacts in the United States and abroad. The Director determined that the business plan “could not be verified for accuracy,” and therefore found, without further explanation, that the Petitioner had no “model/plan for future activities.” The Director also concluded that the Petitioner did not demonstrate sufficient expertise or a record of success in his field because he did not show he “had made a significant contribution” to the field, demonstrate that his work “has served as an impetus for progress” in the field, or establish that he has “generated substantial positive discourse in the . . . industry.” The Director appears to have applied heightened standards that are outside the scope of the second prong of the *Dhanasar* framework. In doing so, the Director overlooked or was dismissive of evidence relevant to the second prong analysis and did not sufficiently explain the reasons for denial.

As to the third prong of the *Dhanasar* framework, the Director concluded that the Petitioner “has not established 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 stated the law and the relevant considerations in performing the third prong’s balancing analysis. However, the Director did not sufficiently identify or discuss the evidence they weighed in balancing those considerations or

meaningfully address the Petitioner's specific claims regarding his eligibility under the third prong. The Director also appeared to reject the Petitioner's claim that obtaining a labor certification would be impractical, noting that "the evidence suggests you are the manager of the company as opposed to the owner/founder." It is unclear which evidence led the Director to that conclusion. Based on [redacted] [redacted] formation documents, tax returns, financial records, and other evidence in the record, it appears that the Petitioner is in fact both a member and manager of the limited liability company and it would therefore be impractical for him to obtain a labor certification for employment with this company.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, for the reasons discussed above, the Director incorrectly determined that the Petitioner has no proposed endeavor, and the decision did not sufficiently explain the reasons for denial.

Therefore, we will withdraw the Director's decision. On remand, the Director should review the entire record, including the Petitioner's appeal, in considering whether he has established eligibility under each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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