U.S. Citizenship and Immigration Services

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

In Re: 31569879

Date: AUG. 06, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a radio frequency 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* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner had not established that eligibility for 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. 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
- On balance, waiving the job offer requirement would benefit the United States.

*Id.*

## II. ANALYSIS

In the initial submission, the Petitioner explained she intended to work as a radio frequency engineer. Responding to the request for evidence (RFE), the Petitioner indicated she would establish her own wireless network design consulting firm in [redacted] Massachusetts. She holds a master's degree in wireless devices and communication facilities and has 14 years of experience in the wireless engineering and communication field.

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 determined, and we agree, that the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor.

On appeal, the Petitioner asserts that the Director erred in concluding she made material changes to the proposed endeavor in response to the RFE. We agree with the Director's analysis of this issue. Initially, the Petitioner proposed working as a radio frequency engineer and did not indicate any intention to own and operate a business. She contends on appeal that progressing to becoming an entrepreneur is a logical professional trajectory. However, the matter on appeal does not concern the logical progression of the Petitioner's career trajectory, the issue is whether the endeavor materially changed from the time of submission to the RFE. Owning a business and working as an engineer are two different undertakings even when they are in the same engineering field. The knowledge and skills required to manage and operate a business are different from the skills an employee within a company would need, though both require knowledge of radio frequency engineering. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening, owning, and operating her own wireless network design company and will only address her initial proposed endeavor of providing radio engineering.

The Petitioner also maintains the Director failed to give due weight to the evidence submitted regarding the national importance of the proposed endeavor. In reviewing the entirety of the record, the Petitioner has not established that the impact of the proposed endeavor has national importance.

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

The Petitioner contends that the expert opinion letter from Dr. [redacted] Chairman of the Manufacturing Engineering Department at [redacted] indicates that the Petitioner's endeavor has national importance. Dr. [redacted] explains that the Petitioner is "a respected leader among her contemporaries and within the engineering sector" and that "in an era where connectivity and wireless technology are at the forefront of daily life and business operations, the criticality of efficient, reliable, and innovative telecommunications infrastructure cannot be overstated." While the letter opines on the Petitioner's expertise and potential benefits her skills bring to the industry, the letter does not explain how they have broader implications for our country. Dr. [redacted] details the Petitioner's experience and reiterates the arguments pertaining to the importance of the telecommunications and mobile technology in general without showing the wider effect in the field of the Petitioner's particular proposed endeavor.

In the initial filing, the Petitioner emphasizes the importance of the fact that the proposed endeavor falls within a STEM (science, technology, engineering, or mathematics) profession. With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[2] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.[3] The Petitioner has not indicated how her expertise in engineering communications through radio waves, with wireless devices, radios or mobile phones advances STEM technologies and research or has broad implications rather than providing her limited professional services by working within a STEM profession.

Moreover, the Petitioner stresses her "expertise" and her "deep knowledge in the field of radio engineering." 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. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

Although the Petitioner presents the importance of various national and government initiatives in the field of radio frequency engineering, such as "Wireless Tower Construction Industry in the US" and "Fact Sheet: Biden-Harris Administration Delivering Results 100 Days into Infrastructure Implementation," the matter here is not whether these initiatives, as well as the topics of radio engineering or similarly related subjects are nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of working as a radio frequency engineer. Likewise, evidence of the industry growth of wireless towers, and broadband connections in the next five years covers a range of topics in the field rather than establishing the national importance of her particular professional services.[4]

[2] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[3] *Id.*
[4] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

## III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, and therefore we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

**ORDER:** The appeal is dismissed.