U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43893354

Date: AUG. 11, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a California-licensed attorney, 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).

USCIS denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she 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 withdraw the 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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,[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

The Petitioner is an attorney who is licensed in the State of California. Evidence of her education includes a degree certificate showing that she earned the degree of juris doctor (JD)from [redacted] University in 2022. The record further shows that prior to earning a JD, the Petitioner was awarded a master's degree in business administration in 2013 by [redacted] University. Based on her claimed "than twenty years of combined experience in legal practice and executive leadership across sales, marketing, and global partnerships in the technology industry," the Petitioner states the following about her endeavor:

> The proposed endeavor is to provide cross-disciplinary advisory and education on AI governance, privacy and data compliance, and technology law to U.S. enterprises and institutions, thereby mitigating significant regulatory risks and establishing scalable compliance infrastructure aligned with U.S. national priorities.

However, as pointed out by the Petitioner on appeal, USCIS did not correctly and consistently refer to the Petitioner's stated endeavor, but rather questioned "how one independent contractor and distributor of cookware through a multi-level marketing company, will meet demands, trigger substantial positive economic impacts, or impact the field or society at a level commensurate with national importance." USCIS referred to the Petitioner as "an independent distributor who sells cookware" and determined that the Petitioner "has not substantiated how the specific endeavor (which is selling cookware) would have global or national implications to the field" or that her "proposed endeavor selling cookware will extend beyond her business."

Then, in discussing whether the Petitioner is well-positioned to advance her proposed endeavor, USCIS determined, "The beneficiary's experience as a[n] Electronic Engineer is limited and does not show a record of success in similar or related endeavors." USCIS concluded that the Petitioner has not provided sufficient evidence demonstrating that she is "well-positioned to advance the proposed endeavor as a Project Engineer."

USCIS therefore misstated the proposed endeavor multiple times in conducting an analysis within the scope of the *Dhanasar* analytical framework. USCIS then concluded that the Petitioner did not establish that: 1) the proposed endeavor has national importance; 2) she is well positioned to advance *this* endeavor; and 3) on balance, it would be beneficial to waive the requirements of a job offer, and

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

thus a labor certification, so that the Petitioner can pursue her proposed endeavor. It does not appear that in reaching these conclusions with respect to each of the three prongs of the *Dhanasar* analytical framework, USCIS relied on the Petitioner's proposed endeavor. Based on the foregoing, it does not appear that the record was properly reviewed and that the denial was based on the evidence in the record.

Because USCIS did not deny the petition based on the Petitioner's actual proposed endeavor, the denial does not provide the Petitioner with a complete and accurate analysis, nor does it adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also 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).

Notwithstanding the lack of a proper analysis, however, it does not appear that the Petitioner's proposed endeavor – to provide consulting services "on AI governance, privacy and data compliance, and technology law to U.S. enterprises and institutions" – meets the three prongs of the *Dhanasar* analytical framework. Therefore, on remand, USCIS should consider the Petitioner's proposed endeavor and then analyze the evidence submitted in support of that endeavor under the *Dhanasar* framework to determine whether she is eligible for a national interest waiver. USCIS should request any additional evidence warranted and allow the Petitioner to submit such evidence within a reasonable period prior to making a determination about the Petitioner's eligibility for a national interest waiver.

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