

December 4, 2023

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
P.O. Box 82521  
Lincoln, NE 68501-2521



U.S. Citizenship  
and Immigration  
Services



LIN2390221553

GABRIEL BARTHOLO BATISTA  
c/o MAISA FERRO E SILVA POMPEO  
THE RIGHT LAW FIRM  
8211 W BROWARD BLVD STE 375  
PLANTATION, FL 33324

RE: GABRIEL BARTHOLO BATISTA  
I-140, Immigrant Petition for Alien Worker

**REQUEST FOR EVIDENCE**

**\*\*PREMIUM PROCESSING\*\***

**IMPORTANT: THIS NOTICE CONTAINS YOUR UNIQUE NUMBER. THE ORIGINAL NOTICE MUST BE SUBMITTED WITH THE REQUESTED EVIDENCE.**

You are receiving this notice because U.S. Citizenship and Immigration Services (USCIS) requires additional evidence to process your form. Please provide the evidence listed on the attached page(s). Include duplicate copies if you are requesting consular notification.

**Your response must be received in this office by February 29, 2024.**

Please note that you have been allotted the maximum period allowed for responding to an RFE. The time period for responding cannot be extended. 8 Code of Federal Regulations (8 CFR) 103.2(b)(8)(iv). Because many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible, but no later than the deadline provided above. If you do not respond to this notice within the allotted time, your case may be denied. The regulations do not provide for an extension of time to submit the requested evidence.

You must submit all requested evidence at the same time. If you submit only some of the requested evidence, USCIS will consider your response a request for a decision on the record. See 8 CFR 103.2(b)(11).

If you submit a document in any language other than English, the document must be accompanied by a full and **complete** English translation. The translator must certify that the translation is accurate and he or she is competent to translate from that language to English. **If you submit a foreign language translation in response to this request for evidence, you must also include a copy of the foreign language document.**

Processing of your I-140 will resume upon receipt of your response. If you have not heard from USCIS within **20 days of responding**, you may contact the USCIS Contact Center at **1-866-315-5718**. If you are hearing impaired, please call the USCIS Contact Center TDD at **1-800-767-1833**.

You, (the petitioner), filed an Immigrant Petition for Alien Worker (Form I-140) on July 18, 2023. On the Form I-140, you sought to classify GABRIEL BARTHOLO BATISTA (the beneficiary) as an alien of exceptional ability seeking to waive the job offer requirement in the national interest and classification as a member of the professions holding an advanced degree and an exemption from the requirement of a job offer, and thus of a labor certification, in the national interest of the United States. The priority date for this petition is July 20, 2023.

## **E21 Exceptional Ability**

The petitioner intends to work as a system developer in the field of information technology.

The E21 immigrant classification applies to individuals who are members of the professions holding advanced degrees or individuals of exceptional ability in the sciences, arts or business. When seeking consideration as an individual of exceptional ability, it must be demonstrated that the individual possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts or business.

A two-part analysis is used to determine whether the petitioner has exceptional ability in the sciences, arts, or business.

- First, we determine whether the petitioner has submitted evidence to qualify under at least three of the criteria required for this classification.
- Second, we determine whether the petitioner has submitted evidence demonstrating that the petitioner possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

All evidence submitted should address both parts of the analysis. A discussion follows addressing the evidence you have provided with the petition.

(i) An official academic record showing that the petitioner has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

The petitioner has met this criteria

(ii) Evidence in the form of letter(s) from current or former employer(s) showing that the petitioner has at least ten years of full-time experience in the occupation for which he or she is being sought;

The petitioner has met this criteria

(iii) A license to practice the profession or certification for a particular profession or occupation;

A license is not required to work in this industry

(iv) Evidence that the petitioner has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

The petitioner has met this criteria

(v) Evidence of membership in professional associations;

The petitioner has met this criteria

(vi) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner has not met this criteria. The letters provided by peers convey that the beneficiary is an asset to the company in their work and is able to problem solve problems in his particular field.

This criterion has not been met because the evidence does not indicate that the achievements and significant contributions to the industry or field have been recognized by peers, governmental entities, or professional or business organizations. To assist in determining that the achievements and significant contributions to the industry or field have been recognized by peers, governmental entities, or professional or business organizations, you may submit:

- Documentary evidence that the petitioner's achievements and significant contributions have provoked widespread public commentary in the industry or field.
- Testimony and/or support letters from experts which discuss the petitioner's achievements and significant contributions to the industry or field (See note below).
- Documentary evidence of the petitioner's work being implemented by others. Possible evidence may include but is not limited to:
  - Contracts with companies using the petitioner's products;
  - Licensed technology being used by others;
  - Patents currently being used, licensed, or commercialized by others and shown to be significant to the field;
  - Published material in professional publications. This evidence should include the title, date, and author, along with a translation, if necessary.
- Other contributions with documentary evidence to show the achievements and significant contributions to the industry or field have been recognized by peers, governmental entities, or professional or business organizations.

Note: Letters and testimonies, if submitted, must provide as much detail as possible about the petitioner's contribution and must explain, in detail, how the contribution was significant (not merely replicating the work of others). General statements regarding the importance of the endeavors which are not supported by documentary evidence are insufficient.

If you are submitting comparable evidence:

- Submit evidence to establish that the six criteria do not apply to the petitioner's field of endeavor; or,
- The reasons the required evidence is not available.

As discussed above, the petitioner has met at least three of the criteria.

Additionally, meeting the minimum regulatory criteria outlined above, alone will not establish eligibility for the E21 immigrant classification. Any evidence submitted in response to this request, should also articulate how the evidence establishes that the petitioner possesses the required level of expertise for the E21 immigrant classification.

The petitioner meets five of the six exceptional ability criteria. USCIS also determines whether the

petitioner has submitted evidence demonstrating that the beneficiary possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. At this time, the beneficiary has not put forth evidence that shows the endeavor will substantially benefit the national economy, cultural or education interests, or welfare of the United States because of his ability in the sciences, arts, or business. There is no evidence submitted which shows the beneficiary has made an impact 'industry wide' that shows the beneficiary is indispensable in the industry. It has not been shown that the beneficiary has a degree of expertise significantly above that ordinarily encountered in the sciences, arts or business. As noted previously, the beneficiary is certainly an asset to the companies that he currently and has previously worked as the letters show. However, there is nothing of note, such as publications or patents that put the beneficiary above others in the same field.

### **National Interest Waiver**

USCIS may grant a national interest waiver as a matter of discretion if the petitioner demonstrates by a preponderance of the evidence that:

- The petitioner's proposed endeavor has both substantial merit and national importance;
- The petitioner is well positioned to advance the proposed endeavor; and
- On balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The evidence does not establish that the petitioner's endeavor has national importance, is well positioned or that it would be beneficial for the United States to waive the job offer and labor certification requirement. Therefore, USCIS requests additional evidence.

### ***Dhanasar Prong 1: Whether the petitioner's proposed endeavor has both substantial merit and national importance***

The first prong of the Dhanasar test assesses whether the endeavor that the foreign national proposes to undertake has substantial merit and national importance. The proposed endeavor may be demonstrated to have substantial merit in a number of fields such as (but not limited to) business, entrepreneurialism, science, technology, culture, health, and/or education. On the other hand, USCIS typically looks to the potential impact of the proposed endeavor in order to determine if it has national importance.

The personal statement submitted intended to establish the petitioner's endeavor has substantial merit and national importance. The petitioner outlines his proposed endeavor and the experience gained throughout his career. The petitioner is a system developer and "intends to perform as a system developer and provide my specialized services in software development and full-stack development to impact the field of information technology through innovation in the U.S." The petitioner also states, "I will perform beyond the work of ordinary system developers, as my endeavor will innovate the field of information technology through the implementation of innovative software solutions and create technology solutions for the financial area and methodologies." The petitioner states his experience will lead to "the creation and development of new techniques that will result in immeasurable contributions and impacts to the U.S. information technology sector, including cost reduction, increased productions, quality assurance, enhancement of the workforce, job creation, and economic growth." The statements in the attorney's letter, the personal statement and in the reference letters is welcomed, but without additional evidence to support national importance it only establishes that the

beneficiary has achieved notable results limited to his employers alone. Due to the limited impact of the petitioner's accomplishments, it does not establish the petitioner's endeavor would have national importance.

Please submit evidence to establish that the petitioner's proposed endeavor has substantial merit and national importance. Evidence to establish that the petitioner's proposed endeavor has substantial merit. An example would be, documentary evidence that supports the petitioner's statements and establishes the endeavor's merit and national importance. Does the beneficiary's endeavor have national

Does the petitioner's endeavor and evidence show the following:

- Have national or even global implications in that particular field, is there evidence to support it
- Does the endeavor have significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area
- Will the endeavor broadly enhance societal welfare or cultural or artistic enrichment

***Dhanasar Prong 2 - Well Positioned to Advance Proposed Endeavor***

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether the petitioner is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

Please submit evidence to establish that the petitioner is well positioned to advance the proposed endeavor.

You submitted the following to show the petitioner is well positioned:

- Diploma and academic transcript for a degree in systems analysis and development
- Reference letters from previous employers
- Numerous certificates of completion for various technology related classes
- Association for Computing Machinery

While the education and certificates of completion demonstrate the petitioner is an educated and qualified individual in the field of software engineering, this does not demonstrate that he is well positioned to advance the endeavor.

You also submitted five letters of recommendation, however, all but one letter do not appear to be from independent experts in the field. The letter from the independent expert states the petitioner is well qualified and have excelled as a software developer. No expert letters indicate they have heard of the petitioner's work in the field and that he has made an impact on how software development has changed due to the beneficiary's techniques or solutions. The reference letters you did provide claim that the petitioner serves in a critical role with the those companies and his work serves a vital national interest. The record contains no independent objective documentary evidence to establish that the petitioner has made any original contributions that have garnered his any recognition or influence in the field which suggests he will advance the endeavor. It would be generally expected that an individual who has had such a substantial impact on the field that the granting of a national interest waiver would be warranted, would be known outside the circle of his limited professional acquaintances. USCIS assigns some weight to the opinions of experts in the field; however, opinion

letters cannot form the cornerstone of a successful claim for a national interest waiver. While letters can provide relevant information about a person's accomplishments, letters solicited by an individual in support of an immigration petition carry less weight than preexisting, independent evidence.

Evidence which best establishes that the petitioner is well positioned to advance the proposed endeavor will document the petitioner's qualifications (skills, experience and track record), support (financial and otherwise) and commitment (plans and progress) to drive the endeavor forward, and will support projections of future work in the proposed endeavor. USCIS may consider factors including, but not limited to, the following:

- The petitioner's education, skills, knowledge, and record of success in related or similar efforts:
- A model or plan for future activities:
  - To show a model or plan for future activities, the petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
    - A plan describing how the petitioner intends to continue his or her work in the United States;
    - A detailed business model, when appropriate;
    - Correspondence from prospective/potential employers, clients or customers; and
    - Documentation reflecting feasible plans for financial support.
- Any progress towards achieving the proposed endeavor:
  - To show progress towards achieving the proposed endeavor, a petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
    - Evidence of grants the petitioner has received listing the amount and terms of the grants, as well as the grantees;
    - Copies of contracts, agreements, or licenses resulting from the proposed endeavor or otherwise demonstrating the petitioner is well positioned to advance the proposed endeavor;
    - Evidence of achievements that the petitioner intends to build upon or further develop (including the types of documentation listed under "beneficiary's education, skills, knowledge, and record of success in related or similar efforts"); and
    - Evidence demonstrating the petitioner has a leading, critical or indispensable role in the endeavor.
- The interest of potential customers, users, investors, or other relevant entities or individuals:
  - To show interest of potential customers, investors, or other relevant individuals, a petitioner may submit one or more pieces of evidence from the following non-exhaustive list:
    - Letters from a government entity demonstrating its interest in the proposed endeavor;
    - Evidence that the petitioner has received investment from U.S. investors, such as venture capital firms, angel investors, or start-up accelerators, in amounts that are appropriate to the relevant endeavor;
    - Evidence that the petitioner has received awards, grants, or other indications of relevant non-monetary support (for e.g., using facilities free of charge, etc.) from Federal, State, or local government entities with authority over the field of endeavor;
    - Evidence demonstrating how the petitioner's work is being used by others, such as:
      - Contracts with companies using products, projects, or services that the petitioner developed or assisted in developing;
      - Documents showing licensed technology or other procedural or technological advancements developed in whole or in part by the petitioner and relied upon by

- others; and
- Patents or licenses awarded to the petitioner with documentation showing why the particular patent or license is significant to the field.
- Other evidence that the petitioner is well-positioned to advance the endeavor.

Note: The petitioner may be well positioned to advance the endeavor even if there is no certainty that the proposed endeavor will be a success. However, unsubstantiated claims are insufficient and would not meet the petitioner's burden of proof.

As stated above, the petitioner has failed to show that the endeavor is of national importance and that he is well positioned to advance the endeavor.

***Dhanasar Prong 3 - On balance, is it beneficial to the United States to waive the requirements of a job offer and thus a labor certification***

The third prong requires the petitioner to demonstrate that, on balance it would be beneficial to the United States to waive the requirements of a job offer and thus a labor certification. Here, the petitioner does not make any claims as to why he is eligible for a waiver due to the impracticality of a labor certification, and the evidence supplied by the petitioner does not appear to indicate that it would be beneficial to waive the requirements of a job offer.

Please submit evidence to 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. This balance was described in *Dhanasar* as on one hand protecting the domestic labor supply through the creation of the labor certification process, while on the other hand recognizing that in certain cases the benefits inherent in the labor certification process can be outweighed by other factors that are also deemed to be in the national interest.

USCIS may evaluate factors including, but not limited to, the following:

- Whether, in light of the nature of the petitioner's qualifications or proposed endeavor, it would be impractical either for the beneficiary to secure a job offer or for the petitioner to obtain a labor certification;
- Whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the petitioner's contributions;
- Whether the national interest in the petitioner's contributions is sufficiently urgent to warrant forgoing the labor certification process;
- Whether the petitioner's endeavor may lead to potential creation of jobs; and
- Whether the petitioner is self-employed in a manner that generally does not adversely affect U.S. workers.

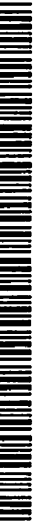
**PLACE THE ENCLOSED COVERSHEET ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS COVERSHEET WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.**

If you choose to mail your response by courier to the Center's physical address, please write Premium Processing, P.O. Box 87103 on both sides of the outer envelope.

Sincerely,



L. Miller  
Director  
Officer: 5080





**COVERSHEET**

PLEASE RETURN THE REQUESTED INFORMATION AND  
ALL SUPPORTING DOCUMENTS WITH  
THIS PAGE ON TOP TO:  
USCIS/NSC  
ATTN: RFE/NOID/NOIR/NOIT  
PO BOX 87103  
LINCOLN, NE 68501-7103

Please check the appropriate box regarding if there is a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, additional fees, additional forms, etc. Please place the new Form G-28, additional fees, additional forms directly under this sheet.

Yes, there is:

☐

A New G-28

☐

Additional Fees

☐

Additional Forms

☐

Other:

If you have moved, write your current address in the blank area below. Please be sure to write clearly.

(Select appropriate check box)

☐

Applicant/Beneficiary

☐

Petitioner

New Address:

As required by Section § 265.1 Reporting change of address. "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act must report each change of address and new address within 10 days of such change in accordance with instructions provided by USCIS."

**REQUEST FOR EVIDENCE**

140 Immigrant Petition for Alien Worker



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