

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer and researcher, 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 Texas Service Center denied the petition, concluding the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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. 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

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 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

The Petitioner is a doctoral student and graduate assistant in the Additive Manufacturing Laboratory, Department of Mechanical Engineering, [REDACTED]. In her personal statement initially submitted with her petition, the Petitioner stated “[m]y proposed plan is to continue to use my advanced degree, and my qualifications to position myself in a way to positively impact the academics and industrial sector of the United States.” The Petitioner also stated, “I will further create a platform in promoting girls to be leaders in my field, and also be able to comfortably encourage more ‘girl child’ to study STEM.”²

In response to the Director’s request for evidence (RFE), the Petitioner submitted a more detailed description of her proposed endeavor in which she stated, “I am currently working on the ‘Fabrication of Inconel/Aluminum Composites by Direct Metal Laser Sintering,’ and the fabrication and characterization of Austenitic Stainless Steel 316L by additive manufacturing.” The Petitioner explained “my plan is to continue research on Inconel/Aluminum Composites Fabrication and periodically publish my work/findings in reputable journals. Also, to work as a researcher and/or tutor with specialty in Additive Manufacturing (AM) and accomplish my post-doctoral degree in the same field.” The Petitioner added that her “postdoctoral work will focus on Laser Powder Bed Fusion (L-PBF) Process Optimization of Alloying Composition Steels for High Temperature and Functional Applications.”

The Petitioner holds a master’s degree in engineering from the [REDACTED] Nigeria, and a master’s degree in engineering from the [REDACTED] Georgia. The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* at 889. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner’s proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her proposed endeavor would sufficiently extend beyond individuals she would serve to impact her field more broadly.

² Apart from working in her field, the Petitioner did not specify how she would encourage more girls to study STEM or detail any platform she would create for girls to become leaders in her field. Without a specific proposal, we are unable to assess the Petitioner’s eligibility for a national interest waiver in this area.