



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

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

In Re: 7235080

Date: APR. 29, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mobile processor software developer and entrepreneur, seeks second preference 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 EB-2 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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she 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.

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 of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was president and chief executive officer (CEO) of [redacted], [redacted]. From March 2009 until March 2017, he served as president and CEO of [redacted] in South Korea. For the reasons discussed below, we conclude that the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his work as an entrepreneur in the field of mobile technology “who will be responsible for research and development activities and commercialization of technologies as well as general management of [his] company.” He explained that his proposed endeavor involves developing software “for mobile broadcasting services including but not limited to emergency (disaster) broadcasting services.” The Petitioner further stated:

The project in which I am most interested is commercialization of [redacted] broadcasting technology such as CBS [cell broadcasting system] Phone [redacted] Notification Broadcasting Service System and CBS-DMB [digital multimedia broadcasting] tandem technology in the U.S., for which I need to perform research and development of several technologies in order to adapt to U.S. settings. . . . As for the CBS text alert message broadcast technology that I have developed and already commercialized in Korea, a mobile broadcasting service using CBS is not used in the U.S., so that more technologies are needed to construct an optimal broadcasting environment. I plan to lead solutions for all of those issues in relation to commercialization.

The Director determined that the Petitioner's proposed endeavor has substantial merit, but that he had not demonstrated its national importance. On appeal, the Petitioner contends that the benefits of his work are “nationwide in their scope, as his field of research and development plays a major role in the economy, technology, and security.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner presented the official academic record for his Master of Engineering degree (1990) from [redacted] University in South Korea and an academic credential evaluation indicating that the aforementioned degree is the foreign equivalent of “a master's degree in electrical engineering from a regionally accredited institution in the United States.”

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. As evidence that the benefit of his proposed work has broader implications in the mobile technology field, the Petitioner provided letters of support discussing how his undertaking stands to improve mobile multimedia [redacted] broadcasting services in the United States. For instance, [redacted], president of the [redacted], asserted that the Petitioner’s proposed endeavor will contribute “to the realization of uninterrupted reception of broadcast services” and will enable “citizens to receive real-time [redacted] information and actively cope with [redacted] situations.” With respect to the Petitioner’s proposed development of a “novel technology to integrate the existing CBS [redacted] text alert broadcast service into Terrestrial DMB [redacted] broadcasting,” [redacted] noted that this technology allows “the general public to simultaneously receive text alerts and watch DMB [redacted] broadcasting. Unlike Internet-based video data transmission, which can overcrowd servers and lead to server slowdowns or breakdowns, Terrestrial DMB broadcasting is transmitted on the terrestrial transmission frequency range, precluding such problems.”

Furthermore, [redacted], professor of media communication at [redacted] University, stated that the Petitioner’s endeavor is aimed at “development of technology integrating the . . . CBS [redacted] [redacted] text alert broadcast service into terrestrial DMB so that people can receive CBS text alert broadcasts and DMB TV broadcasts at the same time.” [redacted] further indicated that the Petitioner’s proposed “development of [redacted] systems using [redacted] text alert broadcast technology is a sector that creates a strong ripple effect on the economy, in addition to its importance for the protection of [redacted] in the U.S. and elsewhere in the world.” In addition to the aforementioned letters of support, the Petitioner provided an October 2018 article about the U.S. [redacted] [redacted]’s test of its nationwide [redacted] system. This article stressed the importance of maintaining an effective national [redacted] system “to notify the public as early as possible and to keep everyone safe.” As the Petitioner has offered documentation showing both the substantial merit and national importance of his proposed endeavor, we conclude that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, professional memberships, [redacted] awards from the South Korean Government, and U.S. and South Korean patents. The Petitioner also provided his U.S. business plan and news articles reporting on his work in South Korea as a mobile communications innovator and entrepreneur. In addition, he offered contracts with companies for licensing and commercialization of his patented technologies, a March 2018 “Letter of Intent” defining business cooperation between his company and [redacted] (a U.S. company that provides carrier-integrated mobile commerce solutions),⁵ and reference letters describing his expertise in mobile technology and his past record of success in that field.

The Director determined that the Petitioner’s evidence was insufficient to meet the second prong of the *Dhanasar* framework. In his appeal brief, the Petitioner argues that the Director did not properly consider that his work “has been successfully used nationwide in the Republic of Korea as a national

⁵ The record reflects that [redacted] was later acquired by [redacted] in December 2018.

[redacted] system by the Korean Government.” He further contends that the news articles, awards, intellectual property documentation, business contracts, and reference letters offer sufficient evidence that he satisfies *Dhanasar*’s second prong. As discussed below, we agree with the Petitioner that his entrepreneurial and technological accomplishments render him well positioned to advance his proposed endeavor.

Multiple expert references identify specific examples of the Petitioner’s success as an entrepreneur and how his work has impacted the mobile communications industry. For example, [redacted] indicated that the Petitioner “founded [redacted] and commercialized his Cell Broadcasting System/Service technology, which is now used as a [redacted] broadcast service” in South Korea. [redacted] explained that the Petitioner worked “to facilitate the application of his patented CBS [redacted] technology to Terrestrial DMB. His efforts resulted in the installation of DMB relay networks in subway networks in 2006, in collaboration with mobile phone manufacturers and DMB channels.” [redacted] further maintained that the Petitioner “contributed to the realization of uninterrupted reception of broadcast services in subway stations, subways, and cars, etc. across the country (especially in [redacted] and other metropolitan areas), enabling citizens to receive real-time [redacted] information and actively cope with [redacted] situations.”

In addition, [redacted] professor at [redacted] University and former Head Administrator of the [redacted], noted that after founding [redacted] the Petitioner “developed the ‘Mobile Broadcast Service’ using . . . ‘Cell Broadcasting System,’ which was an innovative novel technology for broadcasting reception at the time. This technology was commercialized and marketed by a major Korean mobile operator in 1999, and in 2002, [redacted] was listed on KOSDAQ” (the South Korean stock market). As corroborating documentation regarding the significance of his work, the Petitioner submitted evidence indicating that ten South Korean companies have commercialized or licensed his patented technologies. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed endeavor in the United States.

With respect to future implementation of the Petitioner’s technology in the United States, [redacted] vice president of business development and board member at [redacted] stated that the Petitioner recently “developed the [redacted] broadcast technology enabling the public to watch corresponding video news when [redacted] occur, and it’s just around the corner of commercialization.” [redacted] further indicated that “the outcome [the Petitioner] has delivered so far has been successfully utilized as a national level [redacted] system in Korea, and we anticipate it will result in a good outcome in the U.S. market as well.” Additionally, [redacted] asserted: “We believe [the Petitioner’s] technology can make a large contribution to [redacted] in the U.S. once it is well researched, developed, and commercialized.” As noted above, the record includes a March 2018 letter of intent defining business cooperation between the Petitioner’s company and [redacted] to develop his [redacted] system and carry out [redacted] service linked to digital multimedia based [redacted] broadcast.”

The Petitioner’s experience and expertise in his field, record of success as a mobile processor software developer and entrepreneur, patented technological innovations, progress in his industry, and the level of commercial interest in his work position him well to advance his proposed endeavor. Accordingly, the record demonstrates that the Petitioner satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, 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 of a labor certification. As an entrepreneur specializing in mobile processor software development, the Petitioner possesses considerable experience and expertise in the mobile communications industry. The record also demonstrates the widespread benefits associated with research progress in [] broadcasting technology. In addition, the Petitioner has documented his past successes in developing new mobile technologies and commercializing these innovations. Based on the Petitioner's track record of successful research and development work and the potential of that work to advance U.S. [] and technological interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.