



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

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

In Re: 11912873

Date: APR. 19, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an 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.

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 dismiss 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 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

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).

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. The remaining 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner asserted that he intends to continue "to work as an entrepreneur in the United States." He explained that he has "developed two companies focused on real estate investment and development, which I now plan to expand." The Petitioner further stated:

I independently opened [redacted] in Florida in 2016 for the purpose of providing technical services and training related to the architecture and construction markets. In the same year, I began [redacted] a real estate investment company, which is owned through a partnership between [redacted] and with [redacted]
[redacted]

He also indicated that he plans "to grow and expand my two companies . . . to create a single source from which real estate investors can meet all of their business needs." Additionally, the Petitioner noted that [redacted] involves "construction management and consulting"⁴ and that [redacted] "deals with real estate investment."⁵ He asserted that that through these companies he will "assist U.S. companies, institutions, and individuals in need of expert advice and technical services related to the architecture and construction market" while also growing his real estate investment company.

The record includes information about the job outlook for drafters and architects, the demand for architects in California, industry workforce pressures relating to architectural firms, real estate's impact on the U.S. economy, real estate as a source of wealth, features that distinguish our country from other industrial economies, the value of entrepreneurship, and immigrants' benefit to the U.S. economy. In addition, the Petitioner provided articles discussing guidance for becoming an architectural drafter, the talent gap in the architectural industry, the economic impacts of commercial real estate, the expansion of the U.S. housing market, foreign investment in U.S. commercial real estate, immigrants' spending power and tax contributions, the entrepreneurial legacy of immigrants

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

⁴ The Petitioner presented a business plan he prepared for [redacted]. His business plan offers revenue projections of \$78,579 in 2019, \$410,300 in 2020, \$688,700 in 2021, and \$887,900 in 2022. The Petitioner, however, does not adequately explain how these revenue forecasts were calculated.

⁵ The record also includes a business plan for [redacted]. This plan anticipates revenue of \$1,738,000 in 2020, \$1,784,000 in 2021, and \$1,784,000 in 2022. Again, the Petitioner does not adequately explain how his revenue forecasts were calculated.

and their children, and entrepreneurs' involvement in promoting a more inclusive economy. He also submitted information about the U.S. architecture industry, the real estate investment industry, total home values in the United States, foreign investment in our country's real estate market, the value of foreign direct investment to the U.S. economy, investor purchases' effect on the U.S. housing market, immigrant entrepreneurship in America, foreign-born entrepreneurs as drivers of American innovation, and the contribution of immigrant-launched businesses. The record therefore shows that the Petitioner's proposed work as a real estate investment and development entrepreneur has substantial merit.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appeal brief, the Petitioner argues that he has "over twenty (20) years of experience in the business field, explicitly within the real estate and construction industries. Much of this experience was acquired while working with [redacted] auto and home insurance company [redacted] where . . . the Petitioner served as Construction and Project Manager." The Petitioner's experience in his field relates 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.

Furthermore, the Petitioner asserts that his proposed endeavor stands to "motivate economic production and national development, as well as incentivize the domestic job market." He claims that his proposed "work within the United States will generate substantial revenues to the economy and promote significant transactions in high-growth industries." The Petitioner also contends that his undertaking "will produce significant national benefits, due to the ripple effects of his professional activities." He further states that "his proposed endeavor will contribute to tax revenue, strengthen the construction industry, spur U.S. real estate investments, increase the flux of foreign direct investments (FDI) in the nation, prioritize the domestic job market, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to U.S. gross domestic product (GDP)." Additionally, the Petitioner argues that his undertaking stands to affect the national economy by "[o]ffering economic convenience and agility," "spurring economic initiatives on behalf of the United States," and "[p]rioritizing the domestic job market."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to expand his two companies and to offer real estate development and investment services to future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise

to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his companies, business partnerships, and clientele to impact his field or the U.S. real estate industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his two companies’ future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecasts for [REDACTED] and [REDACTED] indicate that these companies have growth potential, they do not demonstrate that the benefits to the regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that [REDACTED] and that [REDACTED] will hire subcontractors, he has not offered sufficient evidence that the area where his companies will operate is economically depressed, that he would utilize a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increases in employment or investment attributable to his companies’ operations stand to substantially affect economic activity or tax revenue in Florida or nationally. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.