



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

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

In Re: 19939051

Date: DEC. 14, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a legal advisor, 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, 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 sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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<sup>1</sup> 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).

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.<sup>2</sup>

## II. ANALYSIS

The Director determined that 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 indicated that he intends to continue his "career in the U.S. as a foreign legal adviser and international business consultant to U.S. companies in the field of public law and public affairs in Brazil" and "to facilitate U.S. companies in cross-border dealings and bilateral corporate investment." He asserted that his "work plan in the United States is aimed at entering U.S. companies with the ability to provide legal advice and guidance regarding cross-border transactions and the development of business within Brazil and Latin America." The Petitioner also listed 11 "cross-border positions which are actively advertised currently on Glassdoor, Indeed, [and] LinkedIn" and for which he claims he is "qualified to facilitate their cross-border dealings and expansion within Latin America."<sup>3</sup> The Petitioner further stated that his undertaking involves:

- U.S. job creation through the export of U.S. goods and services
- Minimizing risk exposure within Brazil
- Facilitating the execution of projects by helping navigate Brazilian bureaucracy and the legal system
- Facilitating the acquisition of appropriate licenses and permits including fast tracking
- Access to an extensive collection of key contacts within public office enabling fluidity of procedures and minimizing unwarranted obstructions
- Lobbying with government institutions/entities/authorities to identify opportunities for U.S. corporate investment
- Contribut[ing] to market research for major U.S. investments regarding public law in Brazil

In addition, the Petitioner presented his business plan for [REDACTED] which states that the company will provide "consulting and legal advice, with expansion to the market of the structuring of international operations in the United States. The services offered by [REDACTED] include the analysis of the legal conditions for the internationalization of companies and the realization

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner's list of prospective companies included Shell Oil, Microsoft, Cleary Gottlieb, Amazon, Norton Rose Fulbright, RBC Bank, International SOS, Citibank, TD Financial Solutions, Morgan Stanley, and KPMG. He indicated that the positions for which he intends to apply within these companies include foreign legal consultant, foreign legal advisor, international business development consultant, and international legal advisor. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his prospective positions to illustrate the capacity in which he intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

of a plan of action for risk reduction.” The Petitioner’s business plan contains market analyses, information about the company’s services, business strategies, financial forecasts and projections, and a description of company personnel. With respect to future staffing, the business plan anticipates that [redacted] will have two employees as the company commences its operations. His business plan also offers sales projections of \$200,000 in year one, \$250,000 in year two, and \$300,000 in year three, but he does not adequately explain how these sales forecasts were calculated.

Furthermore, the record includes a report entitled “Brazil’s Priority Transportation Projects, A Resource Guide for U.S. Industry.” This report, which received funding from the U.S. Trade and Development Agency, offers guidance for U.S. companies regarding market challenges, entry strategies, and business opportunities in Brazil’s transportation sectors. Additionally, the Petitioner submitted advisory evaluation letters from [redacted] an associate professor at [redacted] College, and [redacted] an adjunct professor at [redacted] Law School. [redacted] stated that “the business environment in Brazil has become increasingly uncertain” due to “political turbulence and economic difficulties” and therefore the Petitioner’s undertaking will help U.S. companies navigate “the business environment, financial arrangements, and regulatory regimes in Brazil.” Likewise, [redacted] asserted that the Petitioner’s proposed endeavor stands to “further the national interest of improving U.S. businesses by helping them successfully and cost effectively participate in Brazil’s complex legal system and economy.” Finally, in his appeal brief, the Petitioner offers information relating to U.S. and Brazilian trade and investment matters, including statistics for exports, imports, trade balances, and investments. The record therefore demonstrates that the Petitioner’s proposed work 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 asserts that his proposed endeavor stands to facilitate the improvement and growth of U.S. and Brazilian trade and investment transactions, and therefore his undertaking is of national importance. He contends that the cross-border relationship between the United States and Brazil and the challenges presented by the Brazilian market show “the national importance and broad effects that [his] proposed endeavor would have to the U.S. economy and U.S. business industry.”

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. While the Petitioner’s statements reflect his intention to provide valuable legal services for his future employers and 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 future employers or his company and its clientele to impact the legal consulting field or the U.S. economy 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 company's future staffing levels and consulting activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. 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. *Id.* at 890. For instance, he has not offered sufficient evidence that [REDACTED] would employ a significant population of workers in an economically depressed area or that his endeavor would offer Florida or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increases in foreign trade and investment attributable to his company's future consulting services stand to substantially affect economic activity in Florida or nationally.<sup>4</sup> 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.

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<sup>4</sup> The Petitioner has not shown that the U.S.-Brazilian trade statistics he provides on appeal demonstrate that his specific endeavor will offer substantial economic benefits to our nation or any particular U.S. region.