



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

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

In Re: 13310507

Date: JULY 28, 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 supply chain manager, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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, USCIS may, as a 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, regarding 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

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<sup>1</sup> See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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.<sup>2</sup>

## II. ANALYSIS

Because the denial of the petition centered on the Petitioner's eligibility for the national interest waiver, our decision will focus primarily on that issue. But, first, there is an additional threshold issue that bears discussion.

### A. Member of the Professions Holding an Advanced Degree

The Director determined that the Petitioner is a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree. We do not agree with this determination.

For the purposes of this classification, a profession is an occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2). Here, the Petitioner studied for his bachelor's degree in business administration from the [redacted] University of [redacted] from August 2006 to January 2011. At the same time, he worked as an accounting supervisor for [redacted], a [redacted] subsidiary performing contract work for [redacted] from September 2006 to February 2015. Because the Petitioner was able to enter the occupation before he had a baccalaureate degree, that occupation does not meet the regulatory definition of a profession.

The Petitioner then worked as a supply chain inventory manager for [redacted] from February 2015 to March 2017, slightly more than two years. He entered the United States as an F-1 nonimmigrant student in July 2017, and was still in the United States when he filed the petition in June 2018. At the time of filing, he claimed no employment experience in the United States. Therefore, regardless of whether his position at [redacted] was professional, the Petitioner did not have the required minimum of five years of progressive post-baccalaureate experience in that position.

The Petitioner also made an alternative claim of exceptional ability in business, which the Director did not address. Because we will dismiss this appeal on other grounds, we reserve this issue because further discussion would not affect the outcome of the appeal.<sup>3</sup>

### B. National Interest Waiver

As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

An introductory statement submitted with the petition includes this passage:

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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> See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Upon his immigration to the United States, [the Petitioner] intends to advance his career in Supply Chain Management, where he will direct and coordinate production, purchasing, warehousing, distribution, and financial forecasting services to limit costs and improve accuracy, customer service, and safety. He will examine existing procedures and implement procedures to streamline activities to meet product distribution needs, while also directing the movement, storage, and processing of inventory.

We note that the above description is taken, almost verbatim, from the general job description for supply chain managers on O\*NET, an employment information database sponsored by the U.S. Department of Labor.<sup>4</sup> As such, the above passage describes the general duties of a supply chain manager, but it provides no specific details about the Petitioner's proposed endeavor. Because no blanket waiver exists for supply chain managers, the Petitioner cannot establish eligibility for the national interest waiver based solely or primarily on his intention to seek employment as a supply chain manager. A separate "statement and professional plan" likewise centers largely around the general duties of a supply chain manager, with the added assertion that "U.S. companies doing business or planning on doing business in Brazil" would benefit from his "contacts and experience in Brazil" and "in-depth knowledge of the Brazilian business environment."

The Petitioner cites general information about supply chain management and asserts that "by operating an effective and efficient supply chain, he can boost customer service, reduce operating costs, and improve quality of life. All of these things can result in increased profits, allowing a company to grow, which will require hiring more employees." These are general assertions about the occupation. As such, they explain why a given company would hire a supply chain manager, but they do not show that the work of any one particular supply chain manager has national importance.

Assertions about trade with Brazil are less general, but even then, the Petitioner does not explain how his knowledge of the Brazilian market would lend national importance to his proposed endeavor. General statistics about Brazilian trade do not suffice in this regard, because this information does not establish the impact of the Petitioner's proposed endeavor. Skills and experience do not take on national importance merely because they are potentially useful to prospective employers. Also, the Petitioner proposes no specific endeavor relating to those plans. Rather, he asserts that an employer seeking to do business in Brazil could benefit from his knowledge of that country.

The Petitioner states:

My specific endeavor will potentially impact the U.S. in the following ways:

- U.S. job creation through managing and directing the supply chain industry
- Opportunity to improve quality of life
- Improve customer satisfaction
- Decrease purchasing costs
- Create higher profit margins

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<sup>4</sup> See <https://www.onetonline.org/link/summary/11-3071.04> (last visited June 28, 2021).

- Train inexperienced employees in the supply chain industry
- **Environmental Benefits**
  - Ability to increase the opportunity to decrease pollution
  - Ability to increase the opportunity to decrease energy use
- **Economic Benefits**
  - Decrease production cost
  - Decrease total supply chain cost
  - Increase cash flow
  - Job creation

The Petitioner does not elaborate on these claims. Some of these claimed benefits are employer-specific (such as impact on costs and profit margins); others lack sufficient explanation. For example, with regard to decreasing pollution, the Petitioner submits background evidence showing how increased supply chain efficiency can reduce greenhouse gas emissions, but does not detail how his proposed endeavor will produce such effects at nationally significant levels.

The Director issued a request for evidence (RFE), asking for more information and evidence to establish the national importance of the proposed endeavor. In response, the Petitioner submits a revised “Professional Plan & Statement.” Parts of this statement repeat the earlier version, but he adds that he has founded a company, [REDACTED] to “deliver smart supply chain consultations and logistics solutions to . . . clients,” and that he will continue to operate this company while also seeking “employment as a Supply Chain Manager.” He states:

[M]y overall proposed endeavor in the United States is to offer my expertise to help any company in the U.S. in need of management and organization of their logistics and supply chain operations. As an expert in this field, my work will benefit the companies I work for in the United States . . . . Increased businesses transactions will not only provide a competitive advantage to the companies I work for, but will also generate direct and indirect jobs [for] U.S. workers, and tax revenues for local economies, and the overall U.S. economy as a whole.

Monthly receipts show that [REDACTED] received monthly payments from [REDACTED] in 2019. The receipts do not describe the services that [REDACTED] provided in return for those payments.

The record shows that the Petitioner did not form his new company until December 2018, six months after he filed the petition. His initial description of the proposed endeavor did not include any plans to form such a company, and the Petitioner does not explain how he would be able to devote sufficient attention both to running his own company and to a supply chain manager position with another employer. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner’s establishment of a new company after the filing date cannot retroactively establish eligibility. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The Petitioner does not explain how his revised plan has national importance, rather than primarily benefiting his own employer or clients. Instead, he repeats prior assertions about the overall importance of supply chain management. This information is not persuasive because the collective impact of logistics and supply chain management does not impute national importance to the activities of any one particular supply chain manager.

The Petitioner asserts that “[h]is effective management of supply chain functions . . . will allow companies to grow, and expand, both locally and nationally,” and “will also contribute to U.S. gross domestic product (GDP), and to an increase in employment opportunities for U.S. workers,” and “has ripple effects that significantly benefit other industries.” The Petitioner does not elaborate on these points or provide evidence to support them. Vague and unsupported speculation of this kind does not suffice to establish that his proposed endeavor has national importance.

The Petitioner contends that he is responsible for innovations in supply chain management, but he provides few details and does not show how his work has had a broader impact (for example, widespread adoption of his methods by others). Discussion of his work with [redacted] does not establish the national importance of the Petitioner’s proposed endeavor in the United States, because the Petitioner has not established that his work in the United States will involve a comparable level of responsibility with an employer of comparable size and economic significance.

The Director concluded that the Petitioner did not show how the benefit from his work would “extend beyond his employer to impact the field more broadly.”

On appeal, the Petitioner states:

[T]he Services [*sic*] has[]clearly misunderstood [the Petitioner’s] proposed endeavor, assuming he is working as an Accountant, when he actually performs a completely distinct role as a Supply Chain Manager and Consultant. Denial Decision Letter, at 5. It is also possible that the Services reviewed a record completely distinct from that of [the Petitioner] to reach their decision.

The above passage mischaracterizes the relevant passage from the Director’s decision. In that passage, the Director did not state that the Petitioner “is working as an Accountant.” Rather, the Director stated: “The petitioner has stated that he began his professional career in 2006 with [redacted] as an Accountant and promoted later on to Financial Manager and later between 2015 and 2017 with [redacted] [redacted] as a Supply Chain and Logistics Manager.” The first half of this passage is almost a direct quote from the Petitioner’s signed “Professional Plan & Statement” submitted in response to the RFE: “My professional career began in September 2006, when I became employed as an Accountant at the [redacted] Later, in 2011, I was promoted to the role of Financial Manager.”<sup>5</sup>

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<sup>5</sup> On the same page as the “accountant” reference, the Director made several references to facts and exhibits specific to the correct record of proceeding, including the names of several individuals who provided letters on the Petitioner’s behalf. Elsewhere in the denial notice, the Director quoted at length from materials in the record. The decision notice as a whole conclusively proves that the Director relied on the correct record of proceeding.

On appeal, the Petitioner asserts that, given his background and experience, “there is no doubt that [his] proposed endeavor . . . is not only meritorious, but nationally important, when consider[ing] how much benefit he can generate to the economy and society at large.” The Petitioner does not establish that his intended future work will have effects that he has not documented in his career so far.

Under the heading “Evidence that the Petitioner’s Proposed Endeavor has National Importance,” the Petitioner submits “[a]rticles demonstrating the urgent need of professionals in the supply chain management field.” Rising demand for qualified workers in the Petitioner’s field does not indicate that the work of any one supply chain manager is of national importance.

The Petitioner shows on appeal that he founded a second company, [REDACTED] [REDACTED] about two weeks after the Director denied the petition in April 2020. A client in Brazil who sells “alcohol in gel” (apparently hand sanitizer) asserts his “firm intention of retaining” [REDACTED] [REDACTED] to conduct market research, store, sell, and transport his unnamed company’s product. This new development amounts to another deviation from the proposed endeavor as originally described at the time of filing. Even then, the Petitioner does not establish the national importance of this potential contract or address how his operation of this second company affects his first company, [REDACTED] and his originally stated plan to work for a U.S. employer. The lack of detail in the initial filing, followed by significant new developments, raises questions as to whether the Petitioner had fully formed his proposed endeavor at the time of filing. A general intention to work in the field of supply chain management does not suffice as a specific proposed endeavor.

The Petitioner quotes *Dhanasar*: “Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance.” *Id.* at 889. The same paragraph of the precedent decision included an important clarification: “An 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.” The Petitioner asserts on appeal that “the supply chain economy in the United States . . . accounts for 37% of all jobs, and employs 44 million people.” Materials in the record estimate the size of the logistics and supply chain markets at several trillion dollars per year. The Petitioner does not establish that his work has had, and will have, *substantial* positive economic effects in the context of these figures. By the time of the appeal, two years after the filing of the petition, the Petitioner established that one of his new U.S. companies had one client, and the other had one *potential* client, neither of whom had conducted, or proposed to conduct, a volume of business that is significant in the context of the figures provided in the record.

For the reasons discussed above, the Petitioner has not established the national importance of his proposed endeavor.

The Director also determined that the Petitioner did not meet the other *Dhanasar* prongs, regarding whether he is well positioned to advance the proposed endeavor and whether, on balance, the benefit from the Petitioner’s proposed endeavor outweighs the national interest inherent in the job offer requirement. Because our first prong finding is sufficient by itself to determine the outcome of this proceeding, we reserve the remaining issues. Detailed discussion of those issues cannot change the outcome of this appeal.

### III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.