



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

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

In Re: 12306241

Date: JUNE 9, 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 general operations manager, 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, by way of equivalent, progressive experience in the specialty, but that the Petitioner 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. . . . the 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).<sup>1</sup> *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, 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> 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*).

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 found that the Petitioner qualifies as a member of the professions holding an advanced degree, by way of equivalent, progressive experience in the specialty. Although the Director found substantial merit in the proposed endeavor in the field of business management consultation, the Director concluded that the record does not establish that the Beneficiary's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as follows:

[A] plan . . . to continue working as a [g]eneral [o]perations [m]anager, to advise U.S. companies on how to properly plan, direct, and coordinate the operations of their business. By formulating policies, managing daily operations, and planning the use of materials and human resources [I] will be able to ensure the success of any company that employs [me]. [I intend] to continue using [my] vast expertise and knowledge in the food industry, where [I] can provide expert managerial services to U.S. companies gained from over 15 years of experience. Additionally, [my] experience working in many other industries will allow [me] to work with U.S. companies looking to capitalize in other sectors, especially including those doing business or planning on expanding their business internationally, with the greatest of ease.

In response to the Director's request for evidence, the Petitioner reiterated:

[M]y overall proposed endeavor in the United States is to offer my management expertise to assist U.S. companies, businesses, and organizations in need of reorganization, and assistance in growing within their industry or market, expanding into other markets and ultimately increasing their profits. I am also fully capable of helping foreign companies set up their businesses in the U.S. and facilitating cross-border trade between the U.S [*sic*] and Brazil. All areas and options ultimately result in benefits for the United States, through increased revenue, employment of U.S. workers, and contribution to the country's gross domestic product (GDP).

The Petitioner specified that, in August 2019, after the petition filing date, he "started a consulting company in the U.S [*sic*] . . . as a sister consulting company for the established company that my wife and I have run in Brazil for the last 10 years." The Petitioner also asserted that, for both companies, "I am responsible for overseeing and controlling the work of the third-party teams in the United States, including accountants and law firms; and communicating with stockholders to explain tax issued [*sic*] and keep the stockholders compliant with tax obligations." The Petitioner also informed that, in October 2019, he began working as the general manager of a multinational logistics company located

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

in Florida, and that his role entails “facilitat[ing] the international trade operations of the company, which are supported by a significant number of clients with business operations in Brazil.”<sup>3</sup>

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that “the [P]etitioner has not established that the level of work he proposes to perform will impact the field more broadly as opposed to impacting potential clients or businesses.”

On appeal, the Petitioner summarizes his expertise in business management and his prior career accomplishments in Brazil. The Petitioner also asserts that he will “work in a field that favors numerous industries that already have a substantial impact on the U.S. economy and societal welfare.” The Petitioner also cites a report that “shows that international companies have long been an important foundation of the U.S. economy [creating] direct and residual effects [that] are highly beneficial, not only to their own workers and shareholders, but to domestic competitors, consumers, entities up and down their supply chains, the local communities in which they operate, and the overall economy.” The Petitioner provides a bullet-point list that summarizes the potential accomplishments of the proposed endeavor, as follows:

- U.S. job creation, considering that business productivity leads companies to produce more goods and services, and therefore hire more workers.
- Promoting effective business advisory within multinational environments, in line with updated global business strategy trends.
- Providing unparalleled, and full-service, business consulting services to U.S. companies, including advisory and financial control methods.
- Facilitating the execution of projects by helping navigate Brazilian bureaucracy, and by allowing foreign companies to establish themselves within the U.S. market, which leads to important foreign direct investment actions and drives U.S. economic prosperity.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

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<sup>3</sup> Although the Petitioner initially described the consulting endeavor as advising U.S. companies on how to plan, direct, and coordinate their business operations, the Petitioner did not initially state that the endeavor would entail creating a new business of his own. A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

The proposed endeavor of managing business operations of a logistics company and providing business consulting services to other companies benefits those companies and clients. However, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer and clients, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. We note that the Petitioner reiterates in the bullet-point list on appeal that the endeavor will accomplish "U.S. job creation," as results from general "business productivity," but provides no evidence demonstrating how his specific proposed endeavor would impact the economy or the field. Therefore, the record does not establish the scope of U.S. jobs the endeavor would create in order for us to determine whether it rises to the level of broader, substantial positive economic effects, as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner's statements on appeal regarding his expertise and prior career accomplishments in Brazil do not address how the proposed endeavor in the United States has broader implications beyond his immediate employer and clients. Moreover, the Petitioner's focus on appeal on the economic results of commercial activity in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.