



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

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

In Re: 13089203

Date: JUNE 16, 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 accountant, 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 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).<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 matter of discretion<sup>2</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> 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) (*NYS DOT*).

<sup>2</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>3</sup>

## II. ANALYSIS

The record indicates 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 "working in the field of accounting in the United States, especially focusing on tax planning, finance, accounting systems, cost reduction, and business development." He further stated:

My overall proposed endeavor in the United States is to offer my knowledge, experience, and expertise in the fields of accounting, finance, and taxation to American companies in a wide array of industries that are seeking to streamline and improve their internal accounting and finance processes and decrease their tax burdens and penalties. I will do this by continuing to stay up to date in my field, researching and better understanding not only the tax laws and regulations of the United States, but also the most advanced and innovative accounting and finance processes. I will then develop and implement accounting solutions and tax plans for the benefit of my served companies.

The Petitioner explained that he plans "to work with a company or organization as an accountant and tax consultant in the United States. I am determined to assist U.S. based companies with the improvement of their account books, accounting systems, financial operations, and taxes." He also indicated that his undertaking involves providing "advice to companies that are doing business or planning to do business in Brazil, given the importance of the Brazilian market in the global economy." In addition, the Petitioner stated that his proposed work will assist U.S. companies by reducing costs, generating "revenue, and identifying and reducing the complexity of taxing policies and processes" as well as by developing and implementing "tax strategies that are compatible with the regulatory requirements."

The record includes information about accounting services in the United States, hiring challenges in the accounting field, the effect of multi-localism on foreign direct investment (FDI), the unpredictability of tax bills in Brazil, tax complexity in Brazil and the United States, a projected shortage of expert tax preparers, corporate income tax rates around the world, Brazil's tax bureaucracy, the Tax Cut and Jobs Act's creation of new jobs for tax professionals, the value of FDI to the U.S. economy, and the Brazilian business environment. In addition, the Petitioner provided articles discussing a shortage of skilled accountants in the United States, the complexity of Brazil's tax regime, the top ten most complex tax systems in the world, transactional tax complexity in Latin American countries, management of global tax reporting challenges, the ease of financial operations in the United States, the SelectUSA economic development program, the benefits of international investment, legal

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

tips for foreign companies doing business in Brazil, and the effect of digital technologies on tax policy. He also submitted information about industry demand for qualified accountants and financial professionals, the impact of tax complexity on merger and acquisition activity in Brazil, the challenges of tax compliance in Brazil, the impact of federal tax reform and a talent shortage in the accounting industry, the global tax reset affecting multinational businesses, U.S. tax reform's effect on tax professionals, FDI in the United States, and the most complex places to do business in Latin America. The record therefore supports the Director's determination that the Petitioner's proposed work as an accountant and tax consultant 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 he has "over 20 years of progressive experience in the field of accounting and over 9 years serving as an accountant and tax consultant" and that he is "a very accomplished professional with a solid academic background." The Petitioner's education, skills, and knowledge in his field relate 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 argues that his proposed endeavor stands to produce "substantially positive effects, due to the ripple effects of his professional activities within diverse business sectors" and on "the job market in the United States." He claims that his proposed work offers "a veritable impact of national importance to the United states, serving both social and economic needs." The Petitioner also contends that his undertaking "will promote the national economy by incentivizing cross border transactions, foreign direct investments, and international business negotiations on behalf of the United States – essentially by collaborating with foreign entities looking to expand their wealth into the nation." He further states that his proposed consulting work involving "business and investment initiatives within Brazil" will enhance the U.S. "economy and its business capacities." Additionally, the Petitioner asserts that his undertaking stands to "ensure commercial success with a major U.S. trade partner, Brazil," "motivate business opportunities and prompt economic development that improve the functionality of the nation's business sector," and offer "injection of foreign capital, enabling flow and promoting economic growth."

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 provide valuable accounting and tax planning services for his future U.S. employer 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 employer and clientele to impact the accounting industry or 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. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s accounting and tax consulting projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. 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.