



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

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

In Re: 13092934

Date: JUNE 24, 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 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 additional documentation and 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) (*NYS DOT*).

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 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 "to work as an entrepreneur in the United States" and "to grow the operations of my existing businesses." He indicated that he is currently "developing new clients and projects . . . through my businesses [redacted] and [redacted]. In this way, I develop innovative food service products, motivated by current food trends and evolving food tastes." In addition, the Petitioner stated: "I am also seeking to establish my Brazilian network of restaurants and bars [redacted] in the U.S. . . . In addition to expanding my own businesses, I can also help U.S. companies and investors navigate the complex tax laws and regulations that they will face when making business and investments in Brazil"

With respect to his businesses, the Petitioner explained that he founded [redacted] "in order to streamline my business operations and investments in the U.S. market. Through this company, I acquired a 10% share of [redacted]."⁴ He further indicated that [redacted] is a "Florida-based company focused on the production of health-based popsicles, which are distributed throughout the U.S." Additionally, the Petitioner stated that he launched [redacted] a Florida-based company that serves as [redacted]'s official distributor for small markets and tourist attractions in the state of Florida. The company also distributes products throughout North America and Brazil." Furthermore, the Petitioner asserted that [redacted] is a bar and restaurant with three locations that serve "artisan beers in the state of [redacted] . . . I also have plans to expand this company into the United States."

The record includes information about the advantages of franchising, future trends for legal services, a projected shortage of lawyers in the state of Washington, business trends facing law firms in the United States, the positive effects of globalization on the U.S. economy, foreign-born entrepreneurs as drivers of American innovation, the entrepreneurial legacy of immigrants and their children, immigrants' effect on our country's economy, and immigrant entrepreneurship in America. In addition, the Petitioner provided articles discussing immigrants as successful entrepreneurs, the benefits of international trade and investment, international trade patterns and consequences of globalization, U.S. and Brazilian trade and investment, the contribution of immigrant-owned

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

⁴ The record includes a January 2018 certificate issued by [redacted] President of [redacted] indicating that the Petitioner has "10% of ownership interest" in the company.

businesses to our country's economy, immigrants' spending power and tax contributions, why immigrants are natural entrepreneurs, the rise in immigrant-founded businesses, and capital and innovation as a factor in the debate over immigration reform. He also submitted information about franchising as a simpler way for immigrants to start their own business, the effect of trade on United States and state-level employment, cultural competency as a key to international brand success, U.S. support for Brazil's bid to join the Organization for Economic Cooperation and Development, the value of entrepreneurship to the U.S. economy, the contribution of immigrant-launched businesses, immigrants as drivers of economic growth, and entrepreneurs' involvement in promoting a more inclusive economy. The record therefore supports the Director's determination that the Petitioner's proposed work as an 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 asserts that he has "over 15 years of professional experience" in areas such as "business strategy, business development, mergers and acquisition, cross border transactions, international trade, tax requirements, among other key commercial matters." The Petitioner's 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.

Additionally, the Petitioner argues that his proposed endeavor stands to "motivate economic production and national development, as well as incentivize the domestic job market. His work within the United States will generate substantial revenues to the economy and promote significant transactions in high-growth industries, which will in turn contribute to social progress and the national interest." 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 further states that his proposed endeavor will "benefit the U.S. economy, generate more revenue, increase the flux of foreign trade, and contribute to the generation of jobs in the country." He also contends that his undertaking "will strengthen economic ties between the U.S. and foreign markets" and "produce significant national benefits, due to the ripple effects of his professional activities." Furthermore, the Petitioner asserts that "his proposed endeavor will contribute to tax revenue, 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)." Moreover, the Petitioner maintains that his undertaking stands to affect the national economy by "spurring economic initiatives on behalf of the United States."

The Petitioner's appellate submission includes a blank 2020 Form 941 (Employer's Quarterly Federal Tax Return), 2018 and 2019 Forms W-2 (Wage and Tax Statements) for employees of [REDACTED], and 2018 and 2019 "Balancing Form(s) W-2/W-3 Totals to the Wage and Tax Register."

This documentation indicates that [redacted] employed 32 employees in 2018 and paid them wages totaling \$590,860.75. In 2019, [redacted] employed 12 employees and paid them wages totaling \$209,504.11. The Petitioner, however, is only a ten percent co-owner and shareholder of this company and the record does not show that the capacity in which he proposes to work renders him mainly responsible for its business operations.

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 the operations of his businesses and to seek out clients for investment projects, 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 and his future clientele to impact his field or the food and beverage 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 business plans and companies' future staffing levels stand to provide substantial economic benefits in Florida or the United States. While the Petitioner provided documentation indicating that he is a partial owner and shareholder (ten percent) of a company that employs U.S. workers [redacted], he has not offered sufficient evidence that he will be mainly responsible for running its future operations. Nor does the evidence show that the area where his companies operate is economically depressed, that his companies stand to employ a significant population of workers in that area, or that his endeavor offers the region or its population a substantial economic benefit through employment levels or investment activity. 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 regional or national economy resulting from the Petitioner's business 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.