



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

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

In Re: 11198695

Date: MAY 25, 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 agricultural business director, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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.

Furthermore, 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

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) (*NYSDOT*).

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).

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.³

II. ANALYSIS

The Director concluded 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.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner indicated that he intends “to operate a U.S. company, [redacted] (the ‘Company’ or [redacted])[,] to develop the U.S. market for solutions for the more efficient and effective use of unused agricultural equipment.” Specifically, “[t]he primary service ultimately provided by [redacted] will be the optimization of agricultural machinery and services through an online platform.” The Director determined that the Petitioner demonstrated the substantial merit of his proposed endeavor, and the record supports that conclusion. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of his proposed endeavor.

In his appeal brief, he argues that he “has had success regarding his technological innovations for agribusiness” and references a recommendation letter from [redacted] who discussed the Petitioner’s participation at a 2017 agribusiness workshop and contributions in a project. The Petitioner’s experience in his field relates 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.

In addition, the Petitioner asserts that his proposed endeavor is “part of an overall initiative for sustainable farming, evidenced by the very existence of federal agencies like SARE (Sustainable Agriculture Research and Education), and recognized by researchers as a nationally important issue relating to the environment, health, and the rural economy.” The Petitioner further argues that “[t]he United States, as a whole, and as seen through the creation of SARE, has a profound national interest in American agriculture, including innovations that improve profitability, sustainability, and efficiency.” Additionally, he contends that “[t]he Agriculture industry should be of absolute national importance to the United States, and [his] endeavor will surely positively affect farmers whose quality products and operations sustain communities and society as a whole.”⁴

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. Here, the Petitioner must demonstrate the national importance of his proposed agricultural advertising and hiring business

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

⁴ The Petitioner also references previously submitted documentation relating to farm production expenditures and loan-grant funding from the United States Department of Agriculture and investment in sustainable farms.

rather than the national importance of the agricultural industry and federal assistance programs. 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.

As it relates to [redacted] the Petitioner presented a business plan, including such information as a description of the proposed company and its services, a market analysis, the projected profit and loss, and its marketing and sales strategies. The plan indicates that the [redacted] is headquartered in [redacted] Brazil and “is examining the best alternatives for its legal establishment in order to provide to the US with its quality pollination services.” Regarding future staffing, the business plan claims that it initially will employ three workers, which includes the Petitioner, a partner owner, and operations manager, and “[t]he company projects the inclusion of additional US employees by the end of the first year.” According to the business plan, personnel will total three workers by year 1, five workers by year 2, and eight workers by year 3. The business plan does not indicate which positions these additional employees will occupy, how many of these employees will be from the United States, and the geographic location of these employees.

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 his business plan claims “to be present in the 10 richest American cities in agriculture by the end of the second year” and “[f]rom the second year to expand to all over the United States,” the Petitioner has not offered sufficient, credible information and supporting 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 company and clientele to impact his field or the U.S. agriculture industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake offers substantial positive economic effects for our nation or has significant potential to employ U.S. workers. He has not shown that his company’s future business activity and staffing levels stand to provide substantial economic benefits to specific regions or the United States. While the profit forecasts range between \$150K to \$337K from years 1 to 3, they do not reflect the benefits to the regional or national economy resulting from the company’s profits would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, as pointed out above, he has not identified how many U.S. workers will be employed by the company and where they will be located. The Petitioner has not offered evidence, for instance, that the area where his companies will operate is economically depressed, that he would utilize a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner established that any increases in employment or investment attributable to his companies’ operations stand to substantially affect

economic activity or tax revenue in a state, region, or nationally. 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

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that 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.