



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

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

In Re: 13671679

Date: SEP. 14, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner 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) (*NYSDOT*).

<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 Director found 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 Director denied the petition, in part, concluding that the Petitioner had not sufficiently established the substantial merit and national importance of his proposed endeavor as required by *Dhanasar*'s first prong. See *Dhanasar*, 26 I&N Dec. at 889. On appeal, the Petitioner asserts that USCIS "did not give due regard" to the evidence submitted prior to the denial of the petition, such as the Petitioner's work plans and statements, evidence of the Petitioner's previous work activities in the field, and industry articles and reports. For the reasons discussed below, we withdraw the Director's determination that the Petitioner's endeavor is without substantial merit but 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.<sup>4</sup>

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner asserts that he intends to continue "[his] career in the United States as an [e]ntrepreneur, where [his] work will focus on providing consulting services to the construction, home improvement, and interior design industries, and the distribution of their required supplies."<sup>5</sup> The Petitioner further explained that his endeavor "is two-fold," noting:

First, [I] intend[] to advise existing companies in the construction design industries within the United States, which [I] ha[ve] been doing for the past several months, with the companies, N-G-, N-O-S-, and T-M-. Second, [I] intend[] to develop a manufacturing and distribution business to create specialized and innovative porcelain products in the United States. [I] will operate as a distributor of premium quality porcelain tile products, imported primarily from Brazil, Spain, Italy, and China.

Here, the Petitioner asserts that he will engage in the importation and U.S. distribution of porcelain products from abroad, provide consulting services for companies that wish to do the same, and may also "develop a manufacturing and distribution business to create specialized and innovative porcelain products in the United States." The record also includes articles and reports which examine issues relevant to the economic health of the United States, such as the economic outlook for the construction industry, how home remodeling influences economic growth, the economic significance of companies founded by immigrants in the United States, and the importance of immigrant entrepreneurs as economic contributors. The record therefore shows that the Petitioner's proposed work as an entrepreneur involved in the endeavor has substantial merit. We withdraw the Director's conclusion to the contrary.

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

<sup>4</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>5</sup> We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

Turning to the determination of whether the Petitioner's endeavor is of 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 argues that "as a seasoned entrepreneur, with over 20 years of experience in construction, interior design, and the distribution of construction and interior design supplies. . . there is no doubt that the Petitioner's proposed endeavor in the construction, home improvement, and business development fields would be in an area of national importance." 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.

Significantly, the Petitioner has submitted inconsistent and ambiguous evidence regarding how he will pursue his endeavor, should this petition be approved. The Petitioner states that he formed a business partnership with another company, T-M-, and "reached an agreement whereby porcelain products distribution operations will be implemented through T-M-, and [the Petitioner] became [T-M-'s] main shareholder, with 51% of corporate shares." Alternatively, the Petitioner provides a copy of a business plan for a different company, N-G-, in which he asserts he will engage in his endeavor as N-G-'s CEO. N-G- "will operate as a distributor of premium quality imported porcelain tiles from Brazil, Spain, Italy, and China. . . and will provide consulting services to businesses seeking to import porcelain tiles from these countries."<sup>6</sup> N-G-'s business plan provides combined gross revenue forecasts for its product distribution and consulting services of \$530,850 in year one and \$772,673 in year five of the company's operation. According to the plan, staffing levels will remain constant during this five-year period, and its personnel will include a CEO (the Petitioner), an administrative assistant (the Petitioner's spouse), an import/export specialist, an account manager, and a marketing and sales assistant. The company will also "use the services of an accountant, a legal specialist, warehouse and logistics companies as independent contractors." Notably, Florida corporate records reflect that while the Petitioner *was* a corporate officer of both T-M- and N-G-, both corporations were dissolved as "inactive" in September 2020, after the filing of the appeal.<sup>7</sup>

On appeal, the Petitioner references the Petitioner's previously submitted statements and business plan and, indicates that "[u]pon his immigration, [h]e will prospectively establish a U.S. company" to conduct the previously described product distribution and consulting services, but he does not explain whether he intends to start his business through an entirely different company, T-M-, N-G-, or a combination thereof. Therefore, the Petitioner has not substantiated the relevance of his business plan

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<sup>6</sup> The Petitioner's business plan for N-G- makes no mention of his plan to "develop a manufacturing and distribution business to create specialized and innovative porcelain products in the United States."

<sup>7</sup> Florida corporate records for N-G- and T-M- may be accessed at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName>, (last visited Sep. 14, 2021).

for N-G- (which is currently an inactive corporation) as the basis for pursuing his prospective endeavor.<sup>8</sup> Nonetheless, for the purposes of our discussion, we will reference the Petitioner's N-G-business plan as the means through which the Petitioner would undertake his proposed endeavor in the United States.

The Petitioner asserts that his proposed endeavor stands to “contribute to the U.S. economy by supporting commercial activities both within the United States, and with markets abroad, through cross-border trade initiatives.” He claims that his “proposed endeavor offers direct benefits to commercial and import/export activities, which will substantially increase revenues on behalf of the U.S. economy, thus facilitating the access of funds for U.S. residents, [and] solidifying foreign direct investments throughout the country. . .” The Petitioner also contends that his undertaking “will produce significant national benefits, due to the ripple effects of his professional activities.”

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 operate a company which will import and distribute interior design-related building materials and offer import/export consulting services to future clients, he has not provided 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. *Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company, business partnerships, and clientele to impact his field or the U.S. construction and interior design industries more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to pursue has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects. Specifically, he has not shown that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecasts for N-G- projects growth potential for this (now inactive) company, they do not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

In addition, although the Petitioner asserts that N-G- will hire the Petitioner, his spouse, three other individuals, as well as independent contractors, he has not offered sufficient evidence that the area where his company 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 demonstrated that any increases in employment or investment attributable to his company's operations stand to substantially affect economic activity or tax revenue in Florida or nationally. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

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<sup>8</sup> The Petitioner must resolve the inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.<sup>9</sup>

### 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.

**ORDER:** The appeal is dismissed.

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<sup>9</sup> It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *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).