



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

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

In Re: 23372995

Date: DEC. 22, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, a designer of jewelry and luxury watches, 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 although the record established that the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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).¹ *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 noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor, the Director concluded that the record did not establish that the Petitioner’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.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

Initially, the Petitioner described his experience and background in customizing jewelry and luxury watches, explaining that he was the managing partner of a jewelry company in Brazil and recently opened a sister company, M-T- Corp., in the United States. Regarding his proposed endeavor, he

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

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

stated that he would serve as the Production Manager and Lead Designer for M-T- Corp., and further stated:

I expect to provide exclusive services within this growing industry. My goal is to create unique products crafted per the customer's instructions. I will give customers exactly what they want. They can literally come up with any design they wish, and I will make it happen. I will craft my customers' dreams. I also expect to launch a new brand of watches in the American market . . . aimed to an exclusive audience in the US, Brazil, and Europe.

He further indicated that in his role as production manager and lead designer for M-T- Corp., he would be responsible for the following:

- Assessing customers ideas and trying to find balance between function, reliability, and aesthetics;
- Once the design is specified, supervising the photoshop process to get a good visual impression of what the project will look like;
- Organizing the work on the project and setting forth the procedures to be employed in accomplishing the project;
- Assessing the project requirements;
- Estimating, negotiating and agreeing budgets and timescales with clients and employees;
- Ensuring that health and safety regulations are met;
- Determining quality control standards;
- Supervising the manufacturing process, renegotiating time scales or schedules as necessary;
- Selecting, ordering and purchasing material;
- Organizing training sessions as needed;
- Creating jewelry from materials such as gold, silver, platinum, and pressure for semiprecious stones;
- Selecting and acquiring metals and gems for designs;
- Computing cost of labor and materials in order to determine production costs of products and articles;
- Creating new jewelry designs and modifying existing designs, using computers as necessary;
- Examining gemstone surfaces and internal structures to evaluate genuineness, quality and value, using polariscopes, refractometers, and other optical instruments;
- Designing and fabricating molds, models, and machine accessories, and modifying hand tools used to cast metal and jewelry pieces;
- Researching and analyzing reference materials and consulting with interested parties in order to develop new products or modify existing designs.

The Petitioner claimed that his work has both substantial merit and national importance because the creation of jewelry and customization of watches is a unique art form that will benefit the nation and the cultural environment of its residents. Noting that the jewelry market is an ever growing market, the Petitioner claimed that his work in the field will "further propel its upward trajectory."

The Director issued a request for evidence, asking the petitioner to submit evidence demonstrating the endeavor's national importance. In response, the Petitioner provided an updated personal statement which repeated many of the claims set forth in his initial statement submitted in support of the petition. The Petitioner listed numerous individuals for whom he created custom jewelry and watches during the course of his career, again affirming that he customizes pieces according to each customer's needs. The Petitioner reiterated the duties he would perform in his position as production manager and lead designer for M-T- Corp., and noted that one of his goals was to "create employment in the United States, not only for myself but for US workers." He further stated that as the company recovers from the COVID-19 impact, it will continue expanding and will hire U.S. workers to fill its needs, noting that once the company grows "these workers individually benefit, but so will the United States economy, which will receive beneficial contributions in the form of taxes and increased market activity."

The Petitioner also submitted letters of recommendation in support of his petition, and asserted that these and other letters previously submitted demonstrated the substantial merit and national importance of his proposed endeavor and his overall qualifications for a national interest waiver.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the record did not establish the endeavor's national importance. The Director stated that the Petitioner had not provided supporting evidence showing that his undertaking "will have broader implications, or national or global implications" in his field. Additionally, the Director noted that the Petitioner had not demonstrated that his proposed work "has significant potential to employ U.S. workers," offers "substantial positive economic effects," or "will broadly enhance cultural or artistic enrichment."

On appeal, the Petitioner asserts that he has established, by a preponderance of the evidence, the national importance of his work, and that the Director's decision was in error because it "applied a stricter standard of proof." With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met her burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon review, we concur with the Director's determination that the Petitioner did not demonstrate the national importance of his endeavor. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his own company to impact the jewelry and luxury watch industries more broadly at a level commensurate with national importance. As the Director observed, the Petitioner's proposed endeavor, which entails working as the production manager and lead designer for a company he founded, benefits the company, its clients, and its customers. The record does not establish how the Petitioner and his company's operations will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar*, 26 I&N Dec. at 889-90. For example, while the Petitioner claims that his endeavor, which involves the creation of unique jewelry pieces and watch customization, will provide cultural enrichment, the record does not establish with specific data

or documentation how its jewelry production and sales, considered against the production and sales of similar jewelry companies, rises to the level of having national or global implications. *See id.* Moreover, rather than provide detailed information about how his specific proposed endeavor would have national importance, the Petitioner has provided general information about his occupation and the value of jewelry customization when considered as a form of art. At issue here is not the intrinsic importance or value of custom jewelry and watches, but rather the national importance of the Petitioner's specific proposed endeavor.

In addition, the Director noted in their decision that the Petitioner had not established that his proposed endeavor would have broader implications in his field, significant potential to employ U.S. workers, substantial positive economic effects, or would broadly enhance societal welfare or cultural or artistic enrichment. The Petitioner does not address on appeal how his establishment of a custom jewelry and watch company would have any of these impacts or otherwise be of national importance. Although the Petitioner highlighted that his endeavor would positively impact the economy, and asserted that his expertise in the field, as applied through his company, "will provide numerous benefits to the jewelry and watch market; to the arts sector; to the public in general; and to the US economy," the Petitioner has not offered sufficient evidence to corroborate these claims. 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, the record does not show how opening and operating a custom jewelry company stands to sufficiently extend beyond the Petitioner's own company and clientele to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. Moreover, without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work on behalf of M-T- Corp., the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's jewelry and watch customization would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

We also acknowledge the Petitioner's letters of recommendation, which commend the Petitioner's achievements and accomplishments in the industry and comment on his proposed endeavor.³ For example, [REDACTED] who owns a jewelry and watch company in Brazil, notes that the Petitioner's services are in high demand, particularly from professional soccer players in Brazil, due to the exceptional quality of his work. [REDACTED] accountant for the Petitioner's foreign company, commends the Petitioner's managerial and jewelry craftsmanship skills. Although the writers praise the Petitioner's qualifications and commend his work, they do not explain how the Petitioner's specific endeavor will impact or benefit the industry. Therefore, the letters do not offer support for the conclusion that that the proposed endeavor has national importance.

As discussed above, it is not apparent that the Petitioner's proposed endeavor activities would operate on such a scale as to rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

³ While we discuss a sampling of letters, we have reviewed and considered each one.

For these reasons, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

III. CONCLUSION

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

ORDER: The appeal is dismissed.