



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

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

In Re: 21109885

Date: JUNE 23, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a media and marketing professional, 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, 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)

¹ 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.²

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 conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner indicated that he intends “to implement innovative marketing, advertising and media plan strategy to companies.” He stated that he plans to “start his own consultancy in the U.S. in the advertising and marketing sectors. On [redacted] 2019, [the Petitioner] registered a limited liability company in Florida [redacted].”³

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor and its national importance. In response, the Petitioner asserted that his undertaking involves aiding “in the development and expansion of U.S. companies by creating, launching, selling, and developing new products and services for local and international markets. His goal is to work with American companies to expand their advertising within the United States along with business expansion to the Latin America markets through digital printing, variable data, cross-media and value-added sales applications within those markets.” The Petitioner further stated that “[h]e will advance his endeavor through his company [redacted],”

The Petitioner submitted the business plan for [redacted] “a marketing, advertising, and media consulting company.”⁴ This business plan includes industry and market analyses, information about his company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner’s work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that [redacted] will employ three personnel in year one, five in year two, six in year three, eight in year four, and nine in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while his plan offers sales projections of \$375,000 in year one, \$525,000 in year two, \$607,500 in year three, \$750,000 in year four, and \$855,000 in year five, he did not adequately explain how these sales forecasts were calculated.

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

³ The record includes documentation relating to the Petitioner’s formation of this company.

⁴ The plan states that the company will “help U.S. small and midsize businesses develop and expand their marketing strategies and efforts. The company’s services will be customized in accordance with each client’s needs and developed with the aim to support these businesses’ consistent growth.” In addition, the plan further indicates that the company “will help U.S. small and midsize businesses interested in expanding their operations to Brazil in advertising in the Brazilian market.”

The Petitioner also provided recommendation letters from colleagues who discuss his media and advertising skills and marketing projects.⁵ For example, [redacted] media director at [redacted] [redacted] stated that the Petitioner “is a highly trained, experienced professional, and has taken several courses at the most important media institutions in Brazil. . . . We worked together on many projects for large national and international companies, among which I mention, for example, [redacted] one of the agency’s biggest advertisers at the time.” Additionally, [redacted], an account executive with [redacted] asserted that he and the Petitioner worked together at [redacted] [redacted] indicated that the Petitioner “helped me a lot professionally with his media experience, teaching me several stages of the agency process. I served as his assistant for several of the agency’s accounts, most notably [redacted] which had opened several supermarkets, and the volume of advertising was huge, with ads across all communication channels.” Likewise, [redacted] a media professional with [redacted] in Brazil, asserted that the Petitioner “has great knowledge in media surveying and experience with research institute tools, with which he greatly contributed to the success of the launches and products on the domestic market.”

Furthermore, the Petitioner presented letters from four small business in South Florida [redacted] [redacted] and [redacted] and one in [redacted] Texas [redacted] reflecting interest in his company’s services. The Petitioner’s skills, knowledge, and prior work in his field, as well as interest from potential customers, 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. The letters from the Petitioner’s colleagues and potential clients do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that his proposed work offers broader implications in business, the advertising industry, or the marketing field that rise to the level of national importance.

The record includes information about the economic effects of advertising in the United States, the value of market research, the capability gap caused by the shortage of marketing specialist skills, the talent shortage faced by advertising companies, gross domestic product (GDP) as a measure of economic output, effective sales manager indicators, the benefits of advertising, recruitment as a marketing priority, the role of business in economic development, and the benefits of marketing. In addition, the Petitioner provided articles discussing advertising a key driver of the U.S. economy, the shortage of marketing professionals, digital marketing’s contribution to the talent shortage, recommendations for addressing the digital skills shortage, the role of print media in the future of advertising, global talent shortages, sales and marketing alignment, the impact of COVID-19 on advertising and marketing campaigns, and the role of marketing in economic growth and development. He also submitted information about the occupational outlook for his profession, the role of advertising in microeconomics, new hire skills sought by marketing managers, recommendations for addressing the marketing talent shortage, the digital marketing skills gap, the value of small businesses to the U.S. economy, the U.S. talent shortage, developing sales talent, IBM recruitment marketing, media development and production grants, market intelligence, and the value of media planning. The record therefore supports the Director’s determination that the Petitioner’s proposed endeavor has substantial merit.

⁵ While we discuss a sampling of these letters, we have reviewed and considered each one.

In the decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director stated that the Petitioner had not shown that his undertaking “has implications at a level sufficient to establish national importance.” The Director also indicated that the Petitioner had not demonstrated that his proposed work stands to have a broader effect on job markets, the fields of advertising and marketing, or the U.S. economy.

In his appeal brief, the Petitioner asserts that “there is a shortage of marketing professionals, in which [the Petitioner’s] experience and knowledge would be highly beneficial to companies looking for advertising in marketing proposals.” We are not persuaded by the Petitioner’s claim that his proposed endeavor has national importance due to the shortage of marketing professionals. Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner also contends that he “has the experience and background to provide trainings and workshops to bring educational awareness to the most effective advertising techniques available. . . . [B]y transferring his knowledge, [the Petitioner] will be filling in an important role to those interested in learning from his exceptional career.” As mentioned earlier, the Petitioner’s knowledge, background, and experience 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. Moreover, with regard to the Petitioner’s assertion that he plans to offer trainings and workshops to others, the evidence does not show that his proposed training sessions and workshops offer broader implications for his field, as opposed to being limited to those who participate in his educational programs. While the Petitioner’s plans to provide trainings and workshops have merit, he has not demonstrated that his instructional activities offer benefits that extend beyond his trainees to impact the field of marketing or his industry more broadly. Likewise, 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.

In addition, the Petitioner argues that his proposed marketing and advertising services “will expand the American workforce by creating jobs and . . . generating revenue for U.S. companies who are looking to expand internationally.” He states that he “will work extensively to help expand U.S. businesses in the Latin American markets focused on digital printing, variable data, cross-media and value-added sales applications.” The Petitioner further contends that by “bringing in foreign investment to the United States,” his proposed work “would be in the national interest of helping these companies.” He also indicates that by helping local small businesses succeed, his endeavor “will eventually make a positive impact on the local, state, and national economies.” Furthermore, the Petitioner asserts that his undertaking “will have extensive benefits in the areas of marketing and sales,” as well as “providing opportunities for business growth for international expansion. . . . Said benefits will result in positive impacts to Americans and the national economy.”

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.

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. While the Petitioner’s statements reflect his intention to provide valuable marketing and advertising services for his company’s 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 company and its future clientele to impact the marketing field, the advertising industry, or the 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. 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 forecast for [REDACTED] indicates that the Petitioner’s company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees and that his endeavor will “increase employment,” he has not offered sufficient evidence that the area where his company operates is economically depressed, that he would employ 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. 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.