



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

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

In Re: 19939378

Date: MAR. 28, 2022

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 and real estate developer, 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 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.

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) (*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).

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 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. 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 stated that his proposed endeavor is "working for any company in need of his superior business administration, project management, and business development skills, especially in the real estate industry." The Petitioner also provided articles and business reports discussing the importance of entrepreneurs to the U.S. economy. The record therefore shows that the Petitioner's proposed endeavor has substantial merit.

However, the Petitioner has not provided sufficient evidence that his endeavor has national importance, which focuses on the "the specific endeavor that the foreign national proposes to undertake," rather than the importance of the field, industry, or profession in which the individual will work. *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 the matter at hand, the Petitioner claims that he has "significantly contributed to the business and real estate industry" and "has developed, and gained years of progressive experience that allows businesses to achieve consistent revenue growth, improved and continuous performance, cost reduction tendencies – namely by driving competitive advantage in today's fast-paced and ever evolving marketplace." 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, however, is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong. To that end, the Petitioner has stated that his business, a Florida-based company that operates in the real estate sector, has the potential to "contribute to tax revenue, and ultimately help increase the flow of money in the U.S on a national level" as well as stabilizing the post pandemic housing crisis by facilitating housing for "lower-income families and professionals with less financial powers." The Petitioner also provided a business plan in which he stated that his company's business strategy is "to provide housing units to medium and small investors" by using the

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

Small Business Administration (SBA) HUBZone program⁴ as a reference to “help to fuel small business growth in historically underutilized business zones.” Aside from this objective, the business plan also describes a five-year hiring plan which projects that the company will have a four-person staff in its second year of operation. Although the Petitioner included an organizational chart showing the five-year staffing expansion, it has not provided evidence to substantiate the projected rate of growth.

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 recruit small and medium investors in order to develop 20 housing units in the City of [redacted] Florida, a qualified SBA HUBZone, he has not provided evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. While the Petitioner claims to use the SBA HUBZone as a reference point, he concedes that he does not qualify to actively participate in the SBA HUBZone program and does not otherwise provide documentation indicating his plan to recruit small and medium investors to develop a 20-unit housing project is of national importance. Here, we conclude that the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company, business partnerships, and clientele to impact the real estate field more broadly at a level commensurate with national importance.

Furthermore, aside from the projected hires indicated in the business plan, 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, where the company is headquartered, or in the United States. While the sales forecasts for his company indicate it has growth potential, the Petitioner has not explained how the benefits to the regional or national economy would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

In addition, the Petitioner asserts that his company will build projects to facilitate housing for “lower-income families and professionals with less financial powers.” However, he has not provided 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, even if the projected hires and revenues are realized. 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.

Because the documentation in the record does not establish the substantial merit or national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner

⁴ See *HUBZone Program*, Small Business Administration, available at: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>.

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.