



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

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

In Re: 22144797

Date: OCT. 17, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an “admission and marketing director” and a “marketing scholar specialist,” 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 Nebraska 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. We subsequently dismissed his appeal. The matter is now before us on a combined motion to reconsider and motion to reopen.

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 review, we will dismiss the motions.

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services’ (USCIS) authority to reopen or reconsider to instances where an applicant has shown “proper cause” for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. § 103.5(a)(3). In these proceedings, it is the applicant’s burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In dismissing the appeal, we determined that the Petitioner did not establish the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.¹ See *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) (stating that USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that the proposed endeavor has both substantial merit and national importance). The first prong 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.

As discussed in our prior decision, the Petitioner initially indicated that he intended to continue his career in the education of "admissions and marketing process." He claimed that his proposed endeavor was "focused on getting more and more nationals or American residents to achieve their professional and personal goals, thus achieving that the United States obtain professionals prepared in different areas of the education, economy, culture and business." In response to the Director's request for evidence, the Petitioner stated:

As Director of Admissions and Marketing my effort is not only to comply with the requirements established by the Department of Education or by the Government, my effort is directed to the benefit of the student (professional and personal objectives), that of the education institution (social objectives and economics) in which I am working, society and therefore the country in general generating skilled labor, sustained growth of the economy and generating new professionals with potential in culture, art and business.

The Petitioner further indicated that he is currently employed by [redacted] University [redacted] and that his work involves restructuring "the admission process for the purpose of a tripartite benefit (individual-society-country)." He explained that his process includes creating concepts for his institution that encourage prospective students to engage in "some type of study that will improve their future." In addition, the Petitioner asserted that his proposed work is aimed at making students "understand that in order to have a better future, academic preparation is important. I am continually looking to create or be in those spaces between the community and my admissions department that generate that feeling of improvement in the person." The Petitioner also noted that his undertaking involved interviewing student prospects and ensuring that enrollment meets their needs. Furthermore, he stated that his work entailed restructuring the admissions process to benefit prospective students in accordance with "the characteristics of the educational institution." Finally, the Petitioner indicated that his proposed endeavor included ensuring that students complete their academic requirements, creating admission forms, and serving as a reference for students.

In his appeal brief, the Petitioner asserted that his proposed "work in the United States as a Marketing Scholar Specialist" is aimed at "procuring the enrollment of a major number of international students as possible for the benefit of the United States institutions of higher learning economy." He contended that

¹ Because the Petitioner did not meet the first prong, we did not analyze any other eligibility grounds under the *Dhanasar* precedent decision. See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. at 516, n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

revenues from institutions of higher learning play “a fundamental role in the economy of the United States” and that “international students contributed \$45 billion to the U.S. economy in 2018.” The Petitioner also argued that decreased foreign student enrollment at U.S. colleges and universities attributable to the COVID-19 pandemic “could spell trouble for the financial health of the nation’s higher education institutions” and placed “thousands of American jobs” at risk. Additionally, he pointed to U.S. travel restrictions and declining international student enrollment and claimed that his undertaking involved “enrolling foreign students into the national education system for the benefit of the United States higher institutions’ economy.” The Petitioner concluded that his proposed endeavor has national importance because it “will help maintain an important sector of the American economy” and preserves “a lot of job position[s] currently jeopardized by the present pandemic.”

In dismissing his appeal, we determined that while the Petitioner’s statements reflected his intention to provide valuable student admission and marketing services for his university, he did not offer sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rose 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. Furthermore, we concluded the record did not show that the Petitioner’s proposed endeavor stood to sufficiently extend beyond his university and its future students to impact the field or the U.S. economy more broadly at a level commensurate with national importance. An 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. The Petitioner did not establish that the specific endeavor he proposed to undertake had significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record did not reflect the benefits to the U.S. regional or national economy resulting from the Petitioner’s admissions and marketing projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.*

On motion, the Petitioner claims:

[His] proposed endeavor is targeted to a very particular field, strongly affected by virtue of the pandemic. This particular field comprehends United States Education’s Economy derived by international students. To achieve this endeavor, [the Petitioner] seeks to work in the United States as a Marketing Scholar Specialist procuring the enrollment of a major number of international students as possible for the benefit of the United States Institutions of higher learning economy; not only at [redacted] but for a myriad of clients he has been working with very strongly through his own business known as [redacted] as part of his past experience here in the United States

It is of that level of importance for the United States economy, that the Department of Homeland Security [DHS] posted as part of its news release in January 21, 2022 few days after the last adverse decision, important information Expanding Opportunities in the U.S. for STEM Professionals adding “Twenty-Two New Fields of Study and Takes Additional Steps to Attract Critical STEM Talent”; among which is financial analytics

field of studies of the [Petitioner] through his advanced degree obtained in Colombia

....

The Petitioner also provides the DHS press release referenced above entitled, “DHS Expands Opportunities in U.S. for STEM Professionals,” reflecting:

[DHS] today announced 22 new fields of study have been added to the STEM Optional Practical Training (OPT) program to enhance the contributions of nonimmigrant students studying in the fields of science, technology, engineering, and mathematics (STEM), and support the growth of the U.S. economy and innovation.

....

The STEM OPT program permits F-1 students earning bachelor’s, master’s, or doctoral degrees in certain STEM fields to remain in the United States for up to 36 months to work in their field of study. Adding 22 fields of study will ensure the U.S. economy benefits from students earning degrees in the United States in competitive STEM fields

....

....

Certain noncitizens with an advanced degree or exceptional ability can self-petition for employment-based immigrant visa classification, without testing the labor market and obtaining certification from the Department of Labor, if USCIS determines the waiver of the labor market test be in the national interest. The updated guidance clarifies how to use the program, making it easier for noncitizens with needed skills, such as STEM graduates and entrepreneurs, to embark on a pathway to obtain lawful permanent resident status in the United States.

The record reflects that the Petitioner received a master of science degree in business administration – business intelligence and analytics from [redacted] (United States). Furthermore, the Petitioner submitted an evaluation report from [redacted], regarding his prior education in Colombia. Specifically, the evaluation determined that the Petitioner received an equivalent of a U.S. bachelor of science degree in accounting from the [redacted] [redacted] and an equivalent of completion of 28 semester credit hours of graduate study in financial management from [redacted] University [redacted]. Although the Petitioner claims that he received an advanced degree in Colombia, the evaluation report does not support his assertion. The report does not conclude that the Petitioner received an advanced degree in Colombia; rather, the report only indicates that the Petitioner completed credit hours of graduate study. Regardless, the issue is not whether the STEM field relates to the Petitioner’s advanced degree but whether the STEM field relates to the proposed endeavor. *See 6 USCIS Policy Manual F.5(D)(2)*, <https://www.uscis.gov/policymanual> (stating that with respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance).

The Petitioner further claims that his financial management studies fall within financial analytics and business analytics, two of the newly expanded STEM fields, and references their definitions from 87 FR § 3317:

Business Analytics (30.7102). A program that prepares individuals to apply data science to solve business challenges. Includes instruction in machine learning, optimization methods, computer algorithms, probability and stochastic models, information economics, logistics, strategy, consumer behavior, marketing, and visual analytics.

Financial Analytics (30.7104). A program that focuses on financial big data modeling from algorithms to cloud-based data-driven financial technologies. Includes instruction in financial analytics, financial data processing, knowledge management, data visualization, effective decision communication, machine learning for finance, statistical inference and dynamic modeling on financial data, and project management.

As indicated above, the Petitioner has described himself as an “admission and marketing director” and a “marketing scholar specialist.” In addition, the Petitioner’s proposed endeavor involves recruiting prospective students, assisting in the admission process, and marketing services for his employer. However, the Petitioner did not demonstrate how his proposed endeavor involves business or financial analytics. He did not show that his proposed endeavor involves, for example, preparing individuals to apply data science to solve business challenges or focusing on financial big data modeling from algorithms to cloud-based data-driven financial technologies. Nor did he establish that any of the business or financial analytical examples fall within his endeavor of admission and marketing of prospective students. Although the Petitioner submits a recommendation letter from [redacted] [redacted] claiming that it “analyzes the competencies and professional skills the [Petitioner] has in a broad sense and the expert also states the skills that are suitable with STEM professions or exceptional abilities,” the letter does not explain how the Petitioner’s proposed endeavor falls within the STEM fields of business analytics or financial analytics.

Furthermore, even if his endeavor involved either business analytics or financial analytics, which the Petitioner did not show, the fact that his endeavor falls within a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have both substantial merit and national importance in respect to the first prong of *Dhanasar*. 6 USCIS Policy Manual, *supra*, at F.5(D)(2). Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *Id.* On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance. *Id.*

In addition, for the first time, the Petitioner now claims that he will also be a marketing scholar specialist for his own business, [redacted] and submits an “Executive Summary” claiming that the business “offers rural educational centers with programs to efficiently increase individual enrollment in the community by applying data science and financial models to

institutions” and “[o]ur services include promoting efficiency in admissions processes and procedures (local and international students), educational marketing strategies and marketing plans.”² In addition, he provides invoices for his business. We will not consider new eligibility claims or evidence for the first time that was not presented before the Director. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceedings before the . . . director”); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Moreover, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

Notwithstanding the above, the Petitioner’s endeavor remains the same in that he intends to assist in the admission of students and the marketing of educational services, either at or at his own business. For these same reasons discussed in our prior decision and indicated above, the Petitioner has not shown the national importance of his endeavor. The Petitioner has not demonstrated that his proposed endeavor stands to sufficiently extend beyond his university, his company, or future students to impact the field or the U.S. economy more broadly at a level commensurate with national importance. Moreover, the Petitioner has not established 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. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not reflect the benefits to the U.S. regional or national economy resulting from the Petitioner’s admissions and marketing projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

Because he has not established that our prior decision was based on an incorrect application of law or policy, the Petitioner has not met the requirements for a motion to reconsider. Furthermore, the Petitioner’s new facts and evidence does not demonstrate the national importance of his proposed endeavor.

² We note that the Petitioner continues to argue the recent decrease in international student enrollment at U.S. universities, the recent decline in international student economic value to the United States, and the drop in foreign enrollment at U.S. colleges due to the COVID-19 pandemic. Again, as discussed in our previous decision, we determined that these factors contributed to the substantial merit of the Petitioner’s proposed endeavor. 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. Further, the Petitioner submits and updated list of students he claims to have enrolled at universities where he has worked and presents additional recommendation letters. As addressed in our prior decision, the Petitioner’s previous work recruiting students and his effectiveness as an admissions director do not address the national importance of his proposed endeavor. The Petitioner’s knowledge, skills, 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.

III. CONCLUSION

The Petitioner has not shown that we erred as a matter of law or USCIS policy in our prior decision, nor has he established new facts that would warrant reopening of the proceedings. Consequently, we have no basis for reconsideration or reopening of our appellate decision. The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.