



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

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

In Re: 25819908

Date: APR. 03, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a financial executive, seeks employment-based second preference (EB-2) 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 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 did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen. 8 C.F.R. § 103.5.

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). Upon review, we will grant the motion to reopen and dismiss the appeal.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." Here, the Petitioner presents new facts supported by documentary evidence.

## II. ANALYSIS

### A. Procedural History

The Director determined that the Petitioner was a member of the professions holding an advanced degree and we agreed on appeal.<sup>1</sup> The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

In addition to his academic background in accounting, the Petitioner asserts that he has more than 25 years of experience as a financial executive for large multinational companies. He also states that he served as president of a pension institute and credit union, and of the finance committee of the American Chamber of Commerce in [REDACTED], Brazil. In addition, he served as vice president of industrial companies for the Brazilian [REDACTED] which named him Financial Executive of the Year in 2013.

The Petitioner initially stated that he intends to “continue using [his] skills, expertise, and knowledge to work within the financial field in the United States.” The Director determined that the Petitioner did not sufficiently describe his proposed endeavor and issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. Upon review of the Petitioner’s response to the RFE, the Director concluded that the Petitioner did not sufficiently explain his specific undertaking in the United States so that USCIS was precluded from determining whether the proposed endeavor has substantial merit and national importance under the first prong of the *Dhanasar* framework. The Director also concluded that the Petitioner did not establish that he was well-positioned to advance the proposed endeavor or 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.

On appeal, the Petitioner again stated that he intends to serve as a financial executive in the United States, “providing expert services to any company and helping them to be better informed, organized,

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<sup>1</sup> The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree in accounting from Brazil earned in 2000, followed by more than five years of progressive experience as a financial executive. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

<sup>2</sup> *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

and financially structured.” He further described his proposed duties as a financial executive for a U.S. company, including:

- Support innovation and new business models.
- Develop and deliver agile strategy.
- Drive sustained, long-term growth.
- Manage cash management.
- Handle any and all merger and acquisitions.

In our appellate decision, we determined that the Petitioner sufficiently described his proposed endeavor and that it has substantial merit. However, we concluded that the Petitioner did not establish that his proposed endeavor has national importance under the first prong of the *Dhanasar* analysis.

On motion, the Petitioner states that he provides “new facts and evidence related to [his] endeavor and the prospective economic benefits to the U.S. economy.”<sup>3</sup> He describes his proposed endeavor as follows:

My specific proposed endeavor in the United States is to provide strategic financial advice, feasibility analysis, and implementation actions for planning, directing, and coordinating investments in small, medium, and large industrial businesses. These investments focus on building or expanding factories, warehouses, distribution centers, research and development centers, and correlated systems and technologies.

My proposed endeavor also focuses on improving efficiency and resiliency in logistics, supply chain, and manufacturing operations, generating direct and indirect jobs, higher sales, profitability, and cash flow.

## B. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

As noted above, in our previous appeal decision we concluded that the Petitioner’s proposed endeavor has substantial merit. We further concluded that the Petitioner did not offer sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. We specifically noted that he had not demonstrated that the specific endeavor he proposes to undertake as a financial executive has significant potential to employ U.S. workers or otherwise

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<sup>3</sup> We note that the purpose of a RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8),(12). Despite having the opportunity, the Petitioner did not submit this evidence in response to the Director’s RFE or on appeal. Rather, he states on motion, “[M]y counsel focused my application on my occupation, profession, and field. Despite these being important factors . . . there should have been more focus on describing my specific endeavor and the potential prospective benefits for the U.S. economy.”

offers substantial positive economic effects for our nation. We also noted that the record did not show that the Petitioner's role as a financial executive stands to sufficiently extend beyond his employer(s) to impact the industry more broadly at a level commensurate with national importance. Nor had he shown that the particular work he proposes to undertake offers original innovations that contribute to advancements in finance or otherwise has broader implications for his field.

With respect to national importance, the Petitioner states that his proposed endeavor will support the "reindustrialization process" in the United States, which will in turn stabilize supply chains. He states that his proposed endeavor will result in direct and indirect job creation, allowing for a significant economic impact. The Petitioner asserts that, in providing business strategic financial advice and preparing feasibility studies, he will provide U.S. businesses with successful investment strategies. He cites to his extensive career as a financial executive and the interest he has received from potential employers in the United States, as well as the demand for his services in the U.S. labor market.

In support of his assertions, the Petitioner submits new documentary evidence. This includes articles from local internet news sites about investments made by the Petitioner's former employers based upon the Petitioner's financial advice, and a new recommendation letter. The Petitioner also submits a 2022 employment outlook survey analyzing talent shortages in the United States, the February 24, 2021 Executive Order on America's Supply Chains, and a June 6, 2022 "Fact Sheet" on domestic clean energy manufacturing. The employment survey, the Executive Order, and the fact sheet are all dated after the petition's filing in August 2020. However, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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 Id.* 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.

Although sound financial management is important and supply chain resilience may be the subject of national initiatives, this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. When determining national importance, the relevant question is not the importance of the 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 id.* at 889. Here, much of the Petitioner's evidence relates to the importance of strategic financial planning, rather than his specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we conclude that they do not support a finding that his specific proposed endeavor has national importance.

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 financial management and investment

planning services for a U.S. company and the benefits he anticipates from his work, we agree with our prior decision that these are general claims that are not supported by 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 potential employer to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

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 third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.<sup>4</sup>

**ORDER:** The motion to reopen is dismissed.

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<sup>4</sup> Because we conclude that the Petitioner has not established the national importance of his proposed endeavor as required by the first *Dhanasar* prong, which is dispositive of the appeal, it is unnecessary to analyze any remaining independent grounds. Therefore, we decline to reach but hereby reserve remaining arguments concerning eligibility under the second and third *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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).