



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

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

In Re: 26385377

Date: APR. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,<sup>1</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.

## II. ANALYSIS

The Director did not make a finding as to whether the Petitioner qualifies for the underlying EB-2 immigrant classification and did not clearly make a finding as to whether the Petitioner established that his proposed endeavor has substantial merit.<sup>2</sup> The Director did conclude in his decision that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest, because he did not demonstrate the national importance of his proposed endeavor, that he is well-positioned to advance the endeavor, or that, on balance, waiving the job offer requirement would benefit the United States. Because, as discussed below, we conclude that the Petitioner has not established the national importance requirement, we need not reach the question of whether he has established eligibility for the EB-2 classification, the substantial merit of his endeavor, or the second or third prongs of the *Dhanasar* analytical framework and we reserve our opinion regarding those issues. 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”).

The Petitioner possesses a *Licenciado* degree in Portuguese letters and literature from Brazil and has experience as a trade representative in the medical device industry and as the founder of a company in Brazil that sells medical devices. With his initial filing, the Petitioner did not clearly define his proposed endeavor, rather he stated that he intended generally to pursue business opportunities and work as an entrepreneur. He submitted a “Professional Plan & Statement” in which he stated that his “career plan in the United States is to work as an Entrepreneur, developing new enterprises for the North American market and generating more direct and indirect jobs through my endeavors.” He stated that he would “continue expanding, maintaining good working relationships with investors, and identifying any opportunities for cross-border investments” and that through his endeavors he would provide consultancy in “business areas,” particularly in “sales, marketing, logistics, strategic planning, financial, and commercial representation areas of the medical, healthcare, construction, and restaurant industries.”

The Director issued an RFE, notifying the Petitioner that without documenting a specific proposed endeavor, he “impedes USCIS in determining that the proposed endeavor has substantial merit and is of national importance and that he is well positioned to advance his proposed endeavor” and requested that the Petitioner submit additional documentation to address this and other deficiencies. In response to the RFE, the Petitioner submitted a new “Definitive Statement” in which he specified that he plans to establish a medical device sales and distribution company, [REDACTED] and submitted a

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<sup>1</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).

<sup>2</sup> The Director did state in a request for evidence (RFE) that the Petitioner qualifies as an advanced degree professional, but this finding is not in the decision.

business plan for this venture, along with other documentation. The Petitioner states that he intends to establish this company with an office in Florida and a branch office in Ohio.

As to the first prong of the *Dhanasar* analytical framework, the Director found that the Petitioner did not establish the national importance of his revised proposed endeavor.<sup>3</sup> The Director found that the Petitioner had not shown that the impact of his proposed medical device sales and distribution company had the potential to significantly extend beyond its clients to the industry or field more broadly. The Director noted that the business plan projected initially employing nine workers, and eventually an additional 17 workers, but found that the Petitioner did not establish that his endeavor would require this many employees to operate, nor that this number of jobs created, if accurate, would have a substantial positive economic effect. The Director further found that the Petitioner did not demonstrate that the proposed endeavor would have other significant economic effects, or that it stands to offer benefits that would impact the medical services industry more broadly.

On appeal, the Petitioner asserts that the Director improperly imposed a higher stand of proof than a preponderance of the evidence and erroneously applied the law. However, the Petitioner does not support these assertions with specificity as to the record or to the Director's conclusions, and the Petitioner's unsupported assertions alone are not sufficient to establish error in the Director's decision nor meet his burden of proof to demonstrate eligibility for a national interest waiver. The Petitioner also asserts that the Director did not give due regard to the Petitioner's professional plan, his letters of recommendation, his work experience, and the industry reports and articles submitted. Specifically, the Petitioner claims that this evidence establishes that his proposed medical device sales and distribution company will earn \$33 million dollars in revenue and pay \$3.2 million in wages in the first five years of operation. The Petitioner also restates on appeal many of the claims made in the RFE response brief regarding the importance of small businesses and of entrepreneurship to the U.S. economy.

In determining whether a proposed endeavor has national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

As to the Petitioner's claim that the Director did not give due regard to the Petitioner's professional plan, we conclude that neither the initial "Professional Plan & Statement" nor the "Definitive Statement" and business plan submitted in response to the RFE establish that the Petitioner's proposed

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<sup>3</sup> Although the Director did not conclude that the Petitioner's revised endeavor constitutes a material change, we also note that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform with USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the original evidence in the record. See *id.* at 176. Because the Director's decision, and the Petitioner's appeal, evaluate and discuss the merits of the revised endeavor, we will do the same.

endeavor has national importance. As noted above, the Petitioner's initial professional plan did not describe a "specific proposed endeavor" with enough detail for us to evaluate its potential impact. *See id.* at 889. The Definitive Statement and business plan submitted in response to the RFE describe a specific endeavor of establishing a medical device sales and distribution company, but do not establish this endeavor's national importance. The Definitive Statement claims that the "impact of [the Petitioner's] proposed endeavor is evident by generating about twenty-six (26) jobs for U.S. workers" and "expected revenue of approximately 33 million dollars" within the first five years. These numbers appear to reference the Petitioner's business plan, which states these same projections. However, the business plan does not provide any basis for the estimated number of jobs created. Moreover, although it states that the financial calculations "were based on the IBIS world report purchased to develop this business plan," a copy of this report is not in the record. As such, we cannot assess whether the business plan's stated revenue projections and job creation estimates are credible, and we conclude that the Petitioner has not met his burden to establish that his proposed endeavor stands to have "substantial positive economic effects" that would be commensurate with national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890.

Additionally, we conclude that the Petitioner's letters of recommendation, and the evidence of his work experience, do not establish the national importance of his proposed endeavor. The letter writers, mostly his own professional associates, speak highly of his technical expertise in the medical devices and supplies that his company in Brazil sells, his professionalism, and his skill in business. However, evidence of the Petitioner's knowledge, skills, and expertise, including his work experience, generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether he is well-positioned to advance it. *Id.* The issue here is whether the Petitioner's specific endeavor—to establish a medical device sales and distribution company—has national importance under *Dhanasar*'s first prong.

One of the writers, who describes himself as an "entrepreneur in the medical-hospital industry," does state that he intends to use the Petitioner's company to distribute a line of digital flexible endoscopes that the letter writer's company produces. Another letter writer, the founder of a medical device distribution company, discusses a product used for prostate surgery that the Petitioner's company helped develop in Brazil and that is now on the market in Germany. The writer claims that because the product was "coordinated by [the Petitioner], we expect him to develop the scientific certification work with American universities . . . , besides coordinating the new FDA regulatory registrations of this line and commercialization of our complete products in the USA . . . ." Although this may be evidence of the letter writers' interest in the Petitioner's proposed endeavor, the Petitioner's own statement and business plan do not describe these potential partnerships or specific product distribution opportunities. Additionally, the writers do not discuss in detail the potential impact of these products in the medical field, nor is there other evidence in record that would help establish whether these are novel products, whether they are currently unavailable in the U.S. market, nor whether the Petitioner's endeavor, by distributing these products, would have a broad impact on the medical field. By contrast, the petitioner in *Dhanasar* submitted expert letters from individuals holding senior positions in academia, government, and industry that described the national importance of the petitioner's specific area of research. *Id.* at 893.

Finally, as to the Petitioner's claim that the Director did not give due regard to the industry reports and articles, we acknowledge that the record contains many articles and reports about the importance of

small businesses to the U.S. economy and the contributions of entrepreneurs, and specifically immigrant entrepreneurs, to the economy. But the studies and articles cited by the Petitioner do not discuss the Petitioner or his proposed endeavor. Rather, the evidence relates to entrepreneurship and the economy in general, not to the Petitioner's proposed endeavor of establishing a medical device sales and distribution company. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the "specific endeavor that the [noncitizen] proposes to undertake." See *Matter of Dhanasar*, 26 I&N Dec. at 889. As such, we conclude that the articles and studies in the record and those discussed on appeal do not establish that the Petitioner's specific proposed endeavor has national importance.

The Petitioner's primary contention on appeal is that the Director applied a higher standard of proof than the preponderance of the evidence standard. In support, he largely restates the evidence in the record and the claims already presented in his initial brief and RFE response. We have thoroughly reviewed the evidence in the record and conclude that although the Petitioner asserts that his proposed endeavor has national importance, he offers little corroborative evidence or explanation to support his claims. While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Accordingly, we conclude that the Petitioner has not established the national importance of his proposed endeavor.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the substantial merit of his endeavor and to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the endeavor's national importance, we will not address those arguments here, and reserve our opinion regarding these issues, as well as whether the Petitioner can satisfy that he qualifies for EB2 classification as noted above. See *INS v. Bagamasbad*, 429 U.S. at 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

### III. CONCLUSION

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework regarding national importance. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.