



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

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

In Re: 26965007

Date: JUNE 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer, seeks classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be 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. 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.

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, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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 noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

In the decision, the Director stated that the Petitioner responded to a prior request for evidence (RFE) with evidence that he has a U.S. baccalaureate degree or foreign equivalent degree followed by at least five years of progressive experience in the specialty, which alludes to second-preference eligibility criteria at 8 C.F.R. § 204.5(k)(2). The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan to “direct the operations of . . . a travel agency that will specialize in the organization of trips around the U.S., excursions, and cruises.” The Petitioner also submitted a business plan that indicates his company, founded in 2021, “is a Florida-based travel agency” that will “target clients across the U.S. as well as visitors coming from Brazil to the U.S.” and it “will start targeting all Latin American tourists to the U.S. in Year 2.” Although the Petitioner described the occupation he seeks as “chief executive officer” on the Form I-140, Immigrant Petition for Alien Workers, his business plan states that he will work as the “general manager” of his travel agency. Additionally, the business plan’s employee hiring schedule indicates that the company will employ the following: one “sales representative” in each of the first five years of operation; three “customer service representatives” in the fifth year, increasing from two in the second through fourth years, and one in the first year; and one “reservation agent” in the fourth and fifth years, totaling six employees, including the Petitioner, in the fifth year. The business plan anticipates total sales of \$398,455 and total payroll expenses of \$230,885 for the six employees, including the Petitioner, in the fifth year of operation.

The Director sent the Petitioner an RFE to inform him, in relevant part, that the documents he sent in support of his petition do not establish that the proposed endeavor has both substantial merit and national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889-90. More specifically, the Director observed that “[t]here is no evidence to illustrate that the rate of pay the [P]etitioner intends to pay his current or prospective employees would have ‘substantial positive economic effects’ such as revenue or job creation,” again referencing the first *Dhanasar* prong. *See id.* The Director further observed that the record “does not demonstrate that the proposed endeavor offers benefits which extend beyond the community to impact the entrepreneurial industry more broadly. The Director also addressed how the record does not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91. Accordingly, the Director requested additional evidence that may establish the proposed endeavor has both substantial merit and national importance, along with evidence that satisfies the second and third *Dhanasar* prongs.

In response to the Director's RFE, in relevant part, the Petitioner submitted an updated letter discussing his professional plan. The Petitioner's RFE response letter summarizes his prior academic and work experience and it reasserts, "I intend to continue using my expertise and knowledge to work as a [c]hief [e]xecutive [o]fficer . . . as a reference in the travel operator industry in the United States, specifically in [redacted] Florida." The Petitioner states that he "will continue to participate in major fairs and events to promote the evolution and news of a travel destination [and] develop business partnerships with influencers to brand the destination, allowing me to generate sales."

We note that the Petitioner also resubmitted a duplicate copy of the cover page of the business plan already in the record; however, the immediately following page appears to be the middle of another document, beginning with page number 21, captioned as [redacted]

[redacted] We further note that the remainder of the duplicate copy of the business plan, beginning with page number 2 and ending with page number 38, appears in the Petitioner's RFE response following a cover page that reads "Tab 9.2 Refer to Tab 7.2 – Industry Reports and Articles." Thus, the RFE response contains a duplicate copy of the Petitioner's business plan, albeit not in continuous order.

In the decision, the Director observed that "the document highlighted as being the [P]etitioner's business plan is merely an article published by ATKearney, Global Business Policy Counsel, entitled [redacted]

and is not a business plan documenting the [P]etitioner's proposed endeavor as claimed." As addressed above, though, the RFE response contains a duplicate copy of the Petitioner's business plan in its entirety, albeit not in continuous order. Moreover, the record already contained a copy of the Petitioner's business plan at the time of filing and he need not have resubmitted a duplicate copy of the business plan in response to the RFE. We withdraw the Director's statement in the decision regarding the Petitioner's business plan, particularly to the extent that it may have indicated the record does not contain the business plan at all.

The Director further observed in the decision that "the [P]etitioner 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." Accordingly, the Director concluded that the record does not establish that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See id.* at 889-90. Although the Director did not address whether the proposed endeavor has substantial merit, the decision further concludes that the record does not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91.

On appeal, the Petitioner again addresses his prior academic and work experience and he asserts that his proposed endeavor of operating a travel agency will have national importance. He references the business plan discussed above and he specifically emphasizes that the plan anticipates "total payroll expenses of \$230,885 thousand [sic] dollars in a total of five (5) years of operation, in the state of Florida." The Petitioner also asserts that industry reports and articles in the record establish that his proposed endeavor has national importance.

In determining 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 "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

We first note that although the Petitioner’s academic and prior employment experience is material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—it is immaterial to the first *Dhanasar* prong—whether the specific proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. Therefore, we need not address the Petitioner’s academic and prior employment experience further with regard to the Director’s conclusion that the record does not establish the proposed endeavor has national importance.

The Petitioner’s reliance on appeal on generalized “industry reports and articles” is misplaced for similar reasons to those already address. Again, in determining 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 “specific endeavor that the [noncitizen] proposes to undertake.” *See id.* at 889. None of the referenced articles address either the Petitioner or how his specific, proposed endeavor may have national importance; therefore, they are immaterial to the first *Dhanasar* prong. *See id.*

Turning to the business plan, the Petitioner’s endeavor appears to benefit his company and its clients or customers. However, the record does not establish how the proposed endeavor of organizing trips, excursions, and cruises will have “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or have broader implications, such as “significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. The record does not establish how generating total sales of \$398,455 in the fifth year of operation demonstrates substantial positive economic effects in general, or in the [redacted] Florida, metropolitan area where the travel agency will base its operations more specifically. *See id.* Relatedly, the record does not establish how total payroll expenses of \$230,885 for six employees, including the Petitioner, in the fifth year of operation demonstrates significant potential to employ U.S. workers or other substantial positive economic effects, again either in general or in the [redacted] Florida, metropolitan area more specifically. *See id.* We note that payroll expenses of \$230,885 for six workers is an average annual compensation of less than \$38,500 per worker, and the record does not establish how that average compensation, particularly for a workforce of six individuals, indicates substantial positive economic effects. *See id.*

We acknowledge that the Petitioner stated he would “participate in major fairs and events to promote the evolution and news of a travel destination [and] develop business partnerships with influencers to brand the destination, allowing me to generate sales.” However, the record does not establish how the Petitioner’s generalized participation in fairs and events and partnership with influencers would “promote the evolution and news” of [redacted] Florida, as a travel destination beyond its current status, and it does not establish how the Petitioner’s activities would manifest with “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” or have broader implications, such as “significant potential to employ

U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

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 reserve our opinion regarding whether the record establishes that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and whether the record satisfies the second or third *Dhanasar* prong. 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”); 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.