



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

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

In Re: 26958066

Date: JUN. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur who intends to manage a company operating in the field of water purification, seeks employment-based second preference (EB-2) immigrant 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 record did not establish that the Petitioner's proposed endeavor has national importance, that the Petitioner is well positioned to advance his endeavor, or that there is a national interest in waiving the requirements of a job offer and, thus, of a labor certification. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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 USCIS may, as matter of discretion¹, 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.²

II. ADVANCED DEGREE

To establish his attainment of the foreign equivalent of an U.S. advanced degree, the Petitioner initially submitted his diploma from a university in Russia, a transcript, his resume, and certificates for his completion of English language courses. While not fully analyzed in a request for evidence (RFE), the Director indicated that this documentation was insufficient to establish that the Petitioner holds an advanced degree. The Director provided the following in the RFE:

Since the beneficiary completed his education outside the United States, in addition to the beneficiary’s official academic record, please submit a detailed advisory evaluation of the beneficiary’s credentials. This evaluation is necessary to determine the level and major field of the beneficiary’s education in terms of equivalent education in the United States. An acceptable evaluation should:

- Consider formal education only, and not practical training or experience;
- State whether the beneficiary completed the United States equivalent of high school before entering college;
- Provide a detailed explanation of the evaluated material, rather than a simple conclusive statement; and
- Briefly state the evaluator’s qualifications and experience.

In response to the RFE, the Petitioner submitted the following statement clarifying his educational background:

I am a degreed professional in the field of Organization and Construction Business Management. I currently hold the following degrees:

- Master’s Degree in Organization Management with a concentration in Construction from [redacted] (Russia)

¹ 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).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

- Completed 3 years of study in Russian [redacted] [redacted] Russia) and 1 year of study in [redacted] [redacted] Russia)

The Petitioner also provided the following information with regard to his educational history:

I chose art as a subject of study and I was selected for admission at the [redacted] [redacted].... After completing my first year at art school I realized I wanted to do something socially important and changed my major. I transferred to the [redacted] and started my studies at [redacted]... In 2006 I started my career in sales while continuing my studies at the two universities mentioned above.

According to translations of documents in the record, the Petitioner received a diploma in 2011 from the [redacted] in Russia for the qualification of “Manager.” A transcript shows the following history of the Petitioner’s education (quoted as written):

Prior education document	Diploma of completed secondary education, issued in 2004
Entry exams	Passed
Enrolled in	2004 at [redacted] [redacted] (full time)
Graduated in	2011 at the [redacted] [redacted] (part-time)
Standard Full-time education period	5 years
Area/specialty	Organization management
Specialization	Business management in construction

The Petitioner’s response to the RFE also includes an academic evaluation that equates his five years of study to “a Master’s Degree in Organizational Management with a concentration in Construction Management from an accredited institution of higher education in the United States.” The Director’s decision does not discuss this evidence or explicitly determine whether or not the evidence establishes that the Petitioner holds the foreign equivalent of an advanced degree.

Because we conclude below that the Petitioner did not establish his eligibility for a national interest waiver, we need not fully address the Petitioner’s underlying eligibility for the EB-2 classification.

However, we will briefly discuss the issue to inform the Petitioner that this should be addressed in any future EB-2 proceedings.

The academic evaluation does not provide a sufficient analysis of the Petitioner's coursework. The evaluation states, "The coursework required by [redacted] in Organization Management program is substantially similar to the required course work leading to a Bachelor's Degree and a Master's Degree from an accredited institution of higher learning in the United States." However, the evaluation does not discuss how a degree from this institution equates to a U.S. master's degree or other degree above that of a U.S. bachelor's degree. In fact, the evaluation indicates that a minimum of a bachelor's degree is not required for enrollment in the program for which the Petitioner received a diploma; it states that the program at the [redacted] [redacted] "requires graduation from the US equivalent of high school and competitive entrance examinations for admission and enrollment." The evaluation does not mention the two other schools that the Petitioner attended, and we note that the academic transcript does not identify which coursework was completed at which school or that the Petitioner received a degree from any school other than from the [redacted]. It is not clear to what U.S. degree level the Petitioner's degree might equate. The inconsistencies in the evaluation and its lack of analysis call into question its evidentiary credibility; USCIS considers such credentials evaluations as advisory only, and if questionable in any way, USCIS may give them less weight. *See Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

In addition, while a petitioner may establish achievement of an advanced degree through attainment of a bachelor's degree and at least five years of progressive experience in the field, the record does not include documentation of the Petitioner's specific work experience beyond his resume and congratulatory letters from previous employers that generally reference his work; these letters are brief and express gratitude but do not provide details concerning the Petitioner's employment.³ In any future EB-2 proceedings, the Petitioner must establish that he qualifies for the EB-2 classification as a member of the professions holding an advanced degree.

III. NATIONAL INTEREST WAIVER

The Petitioner intends to manage a company that will work with another company to provide services related to water purification. The record includes a business plan in which the Petitioner describes issues related to contaminated tap water in the United States. The business plan includes the following description of the Petitioner's proposed endeavor:

Between 2018 and 2020, 56% of Americans drank water from systems contaminated with lead, of which there is no safe level of exposure. Currently, many private water system treatment providers exploit the justified fear over unsafe water to mark up their services and leverage scare tactics to convince consumers to purchase equipment they do not need. That is where [redacted] (also referred to as "the Company") steps in.

³ The letters from the Petitioner's former employers must include the name, address, and title of the writer, and a specific description of the duties performed by the Petitioner. If such evidence is unavailable, other documentation relating to his experience will be considered. *See* 8 C.F.R. § 204.5(g)(1).

Founded in 2021 by organization and construction business management expert [REDACTED] offers real solutions to water contamination. The Company, through partnership with [REDACTED] provides education, free water testing, consultation, and water systems installation to the residents and businesses of southern Florida. The Company's approach is all about empowering the customer to ensure safe water access—not frightening them. By the end of Year 2, the Company will expand its territory to cover the rest of the state by hiring subcontractors.

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. *Dhanasar*, 26 I&N Dec. at 889.

While the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director concluded that the record did not establish the national importance of the endeavor. He acknowledged the Petitioner's citations in the business plan and his submission of articles and reports that focus generally on the water supply industry and contamination issues throughout the United States to demonstrate the importance of the field of water treatment and delivery; this information, however, does not demonstrate the importance of a particular endeavor proposed by the Petitioner. The Director explained that, 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 foreign national 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, as 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 one that has "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. The Director further explained that, to evaluate whether a petitioner's proposed endeavor satisfies the national importance requirement, we must look to evidence documenting the "potential prospective impact" of the work of the proposed endeavor. *Id.* at 889.

On appeal, the Petitioner asserts that the Director's decision was in error, although he does not specify how the Director erred or what factors in the decision were erroneous.⁴ Much of the brief quotes verbatim from an expert opinion letter included in response to the RFE; the brief describes the importance of water treatment in the United States, discussing statistics and findings from the U.S. Census Bureau, the Environmental Protection Agency (EPA), and the Centers for Disease Control (CDC), as well as the local and global implications of contaminated water and the lack of available clean water. The Petitioner also discusses in the brief, as he does in the business plan, the increasing privatization of public water delivery and the expansion of larger public utility firms. The Petitioner

⁴ An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

emphasizes that the evidence of record establishes both his eligibility for the EB-2 classification and for a national interest waiver.

Upon review, we agree with the Director's conclusion that the Petitioner has not established that his entrepreneurial endeavor to work with a water treatment company to operate in the [redacted] area rises to the level of national importance. While the business plan cites compelling evidence of water contamination issues in the United States, the business plan does not describe specific ways in which the Petitioner's company, [redacted] will address contamination issues beyond clientele within an area limited to its location of operation; the forecasts included in the business plan are not supported by explanations or objective evidence to support the estimations projected.⁵ The business plan depicts the sources and uses of \$25,000 that the Petitioner states he has invested in his company, but the plan does not detail how those funds or the company's relationship with [redacted] will impact the water treatment industry on either a national or global scale.

An Independent Contractor Agreement included in the record shows that [redacted] will work as a contractor for [redacted]. Among other stipulations, the contract states that [redacted] will provide products and services that are "fully and materially accurate and in accordance with any and all training material supplied by [redacted]" and that it "will not disclose to [redacted], or induce [redacted] to use, any confidential or proprietary information or material belonging to any employer or other person or entity." Though the business plan states that [redacted] "plans to provide [redacted] with more opportunities in the future, such as expanding [redacted] territory to north Florida as a franchisor," and claims that [redacted] "can now hire additional subcontractors throughout the state," it appears that the Petitioner's business decisions and intentions are limited in scope and scalability as a contractor. The record does not include sufficient documentation to establish [redacted] significant potential to employ U.S. workers or otherwise demonstrate its positive economic effects. The Petitioner has not established the national importance of his proposed endeavor.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

⁵ The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

ORDER: The appeal is dismissed.