



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

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

In Re: 27468029

Date: OCT. 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer, seeks classification as 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 Petitioner qualifies as an individual of exceptional ability, but 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 immigrant 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.

“Exceptional ability” means a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2). To establish exceptional ability, an individual must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.¹ If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual>.

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,² 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 Petitioner proposes to continue operating his company, [REDACTED] [REDACTED] which develops and builds commercial, industrial, and residential electrical projects, with a focus on sustainability certifications, in [REDACTED] Florida.

As stated above, the Director found as to the threshold issue of the Petitioner’s eligibility for the underlying EB-2 immigrant classification that the Petitioner qualifies as an individual of exceptional ability. Based upon the Petitioner’s relevant education, work experience, license to practice engineering, and memberships in professional business and construction associations, we agree that the Petitioner satisfies at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).³ Additionally, the record contains evidence of the Petitioner’s recognition by peers and the media as an expert in his field and evidence of his contributions to the construction sector in Venezuela, particularly his time as the head of the [REDACTED] (a private industry group, organized as one of the chambers of the umbrella organization, [REDACTED] which represents national business interests across different industries in the Venezuelan economy). The record contains evidence of his role during that time in managing collective bargaining negotiations at a national level and managing the chamber’s response to the Venezuelan government’s nationalization of construction-related industries. Therefore, we conclude that the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field, and we agree with the Director that the Petitioner has established that he is an individual of exceptional ability.

The Director also determined that the proposed endeavor has substantial merit, and that the Petitioner is well-positioned to advance the endeavor. However, the Director concluded that the Petitioner did not establish the national importance of the proposed endeavor, nor that, on balance, waiving the job offer requirement would benefit the United States.

² 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).

³ See 8 C.F.R. § 204.5(k)(3)(ii)(A) (possessing a degree, diploma, or certificate relating to the area of exceptional ability); 8 C.F.R. § 204.5(k)(3)(ii)(B) (possessing at least 10 years of full-time experience in the occupation); 8 C.F.R. § 204.5(k)(3)(ii)(C) (a license to practice the profession); and 8 C.F.R. § 204.5(k)(3)(ii)(E) (membership in a professional association).

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director discussed the evidence in the record and many of the claims made by the Petitioner, including those relating to the construction labor shortage, the growth of the engineering and construction industries, the importance of small businesses to the U.S. economy, the impact of the construction industry on climate change, and the importance of science, technology, engineering, and mathematics (STEM) workers. However, the Director concluded that these claims, and the evidence in support of them, did not establish the national importance of the proposed endeavor, because the claims primarily relate to the industry or the occupation rather than the proposed endeavor itself. The Director determined that, even considering that the proposed endeavor involves a small business, a STEM field, and sustainability efforts, the Petitioner did not establish that the specific endeavor itself has national importance. The Director also reviewed and discussed the business plan and financial documents submitted and concluded that the Petitioner did not establish that the endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects.

On appeal, the Petitioner submits a brief and a copy of evidence previously submitted and asserts that he has established eligibility for a national interest waiver. The Petitioner first reiterates the claims related to his qualification as an individual of exceptional ability. Although the Director concluded that this requirement was established, the Petitioner asserts that an understanding of his qualifications and background is needed to assess the national importance of his proposed endeavor. The Petitioner also contests the Director's conclusion that much of the evidence supports the importance of the industry and occupation overall, rather than establishing the specific endeavor's national importance. The Petitioner insists instead that the record does demonstrate by a preponderance of the evidence that the specific, proposed endeavor is of national importance. The Petitioner stresses again on appeal that the endeavor relates to a STEM field, that it is a small business, and that the company intends to use and promote sustainable energy solutions. The Petitioner also claims that the company's potential to employ U.S. workers and have positive economic effects establishes its national importance.

Upon de novo review, we conclude that the Petitioner's assertions do not overcome the Director's findings nor establish the national importance of the proposed endeavor. First, as to the Petitioner's claim that his qualifications and background help establish his proposed endeavor's national importance, we agree with the Director that the evidence of a petitioner's skills, knowledge, and record of success generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether they are well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. While a petitioner's past work and achievements may be helpful in illustrating how they plan to carry out their proposed endeavor and in some circumstances its potential to have a broad impact, in general the focus of the first prong is on the proposed endeavor itself and not the petitioner. *See id.* The issue here is whether the Petitioner's specific endeavor—to continue operating his electrical contracting and construction business—has national importance under *Dhanasar's* first prong. The Petitioner has not explained how his achievements in the field demonstrate that this endeavor has the potential to impact the construction, engineering, or electrical contracting fields or the economy at a level commensurate with national importance.

We are also unpersuaded by the Petitioner's assertions on appeal that the claims previously raised in response to the request for evidence (RFE) support the proposed endeavor's national importance. The Petitioner raised six specific points in his RFE response in an attempt to establish national importance;

the Director concluded that these primarily related to the industry or occupation or otherwise did not establish national importance. On appeal, the Petitioner insists that these points do in fact establish the endeavor's national importance and that the Director's conclusion to the contrary was the result of "confusion" on the part of the Director. The Petitioner on appeal attempts to provide "a more detailed explanation" of these six points to demonstrate that they in fact relate to the specific endeavor rather than the industry in general. But even with the additional details that the Petitioner provides, we agree with the Director that these points do not establish the national importance of the specific, proposed endeavor.

Of these points, several simply repeat the industry-wide claims related to the importance of STEM workers, small businesses, the construction industry, and the construction labor shortage. While such evidence can be helpful in establishing the potential need for and interest in construction contracting businesses such as the Petitioner's, this primarily speaks to the substantial merit of the proposed endeavor, which we agree with the Director has been established. Additionally, while such evidence could also be a positive factor in determining national importance, it is not, by itself, sufficient for the Petitioner to meet his burden of proof. We agree with the Director that 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 "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889.

The points raised by the Petitioner that do relate to the potential impact and benefit of the Petitioner's specific endeavor include the direct and indirect jobs the company may create, potentially in an area of high unemployment, the fact that the company is an established subcontractor with larger construction companies, and the fact that the company will incorporate sustainable and energy efficient solutions in its projects. Regarding potential job creation, the Petitioner states that the company has created 11 total jobs, including regular employees and contract workers. However, the Petitioner did not demonstrate that this number of jobs created, even considering the claimed "indirect" jobs, has the potential to provide substantial economic benefits at a level commensurate with national importance. *See id.* at 890. The Petitioner also submitted a business plan with financial forecast. The financial forecast states that project sales in 2022 were approximately \$700,000 and estimates that the company will have projects totaling approximately \$1.25 million in 2023. The plan further forecasts that sales will grow 30% in 2024 and 2025, leading to approximately \$2 million by 2025. But again, the Petitioner did not provide evidence to support the claim that the benefits to the regional or national economy from these business operations would reach the level of "substantial positive economic effects" contemplated by *Matter of Dhanasar*. *Id.* Additionally, in support of the claim that the company is an established subcontractor, the Petitioner provided copies of agreements with another construction company for the Petitioner's company to provide electrical subcontractor services on past projects. Although these agreements help show some of the business operations of the company, they do not establish that these operations have the potential to provide substantial positive economic effects. *Id.*

Finally, we conclude that the Petitioner's claim that the company will use sustainable and energy efficient solutions in its projects does not establish the endeavor's national importance. In support of this claim, the Petitioner primarily relies on evidence relating to the global problem of climate change and the national attention on addressing it. However, the Petitioner does not demonstrate that the

company will advance any methods or services that have the potential to have a broad impact on climate change. For example, the Petitioner does not claim that the company intends to develop and implement any new processes or products that may offer advances in energy savings beyond what is currently available on the market. Here, the Petitioner attempts to analogize his endeavor with the language in *Dhanasar* that an endeavor that offers “improved manufacturing processes” may have national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. But the Petitioner does not propose an improved engineering, electrical, or energy efficiency process, and simply proposes to implement sustainable practices and energy efficient technologies which are already in use.

The Petitioner’s claims on appeal do not overcome the basis for the Director’s findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish national importance as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second and third *Dhanasar* prongs. See *INS v. Bagambhad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. 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.