



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

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

In Re: 28082216

Date: SEP. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer and entrepreneur, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

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, 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 (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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, the Director found that the Petitioner did not meet the first prong of *Dhanasar*'s analytical framework in that his proposed endeavor has substantial merit but not national importance.²

The Petitioner indicated that his proposed endeavor involves working as an engineer and CEO of his own company, [REDACTED]. The Petitioner will develop small and medium-sized real estate projects that would provide "low-cost residential properties to serve in the low-income population" and commercial properties "necessary for the population living in those regions." The Petitioner asserted that he intends to "offer the American market high quality and affordable real estate solutions" and "contribute

² The Director also found that the Petitioner did not meet the second or third prong of the *Dhanasar*'s analytical framework.

to the reduction of the housing deficit that currently exists in the U.S.” as well as “attract foreign investments to the country.”

On appeal, the Petitioner contends the Director “erroneously denied Petitioner’s case without providing him with an opportunity to submit additional evidence, and imposed novel substantive and evidentiary requirements beyond those set forth in the regulations in contravention of precedent.”

However, in the same brief, the Petitioner acknowledges that the Director issued a request for evidence on May 25, 2022, and that he timely responded to this RFE. Furthermore, the Petitioner’s RFE response states, “[w]e regret that Petitioner’s application failed to demonstrate that his Proposed Endeavor has substantial merit and national importance in a clear manner.” Accordingly, we conclude the Petitioner had an opportunity to present additional evidence.

Although the Petitioner asserts that the Director imposed “novel” evidentiary requirements, he does not identify or describe how the Director’s standard of proof deviated from a preponderance of the evidence. A petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, the Director properly analyzed the Petitioner’s documentation and weighed the evidence to evaluate the Petitioner’s eligibility by a preponderance of evidence.

The Petitioner does not submit any new evidence with the appeal but resubmits documents that are already on record, including his business plan, letters of recommendation, press releases from the White House on importance of affordable housing, and a news article discussing the rising demand for affordable housing and challenges facing the construction industry. The Petitioner makes the same claim raised in his RFE response, that his proposed endeavor has national importance because it will promote the Biden administration’s priority on providing affordable housing and closing the gap on housing supply shortfall.³ The Petitioner states that his proposed endeavor “has national or even global implications within a particular field as [the Petitioner’s company] can contribute to the Federal Government’s plans towards investing in affordable housing and will broadly enhance societal welfare.”

The Petitioner has demonstrated substantial merit of his endeavor as his plans for providing affordable housing align with the federal government’s priorities. However, in 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 Dhanasar*, 26 I&N Dec. at 889.

The Petitioner submitted various letters of recommendations that describe the Petitioner’s experience, skills, and abilities as a civil engineer and an entrepreneur. However, this type of evidence relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to

³ White House Briefing Room, Fact Sheet: Biden-Harris Administration Announces Immediate Steps to Increase Affordable Housing Supply (Sept. 1, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/01/fact-sheet-biden-harris-administration-announces-immediate-steps-to-increase-affordable-housing-supply/>.

the foreign national.” *Id.* at 890. These letters do not address how the Petitioner’s proposed endeavor’s specific impact or methodology that differs from or improve upon those already available in the United States, as contemplated by *Dhanasar*: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* at 889.

Similarly, the expert opinion letter from [REDACTED], a founder and executive director of [REDACTED] (a licensed real estate brokerage company) and a faculty member at the University of [REDACTED] largely dwells on the Petitioner’s 28 years of experience as a civil engineer and a successful entrepreneur of his own companies. [REDACTED] also addresses the housing shortage in the United States and the federal government’s initiatives and priorities on affordable housing. However, it does not offer any persuasive detail concerning the endeavor’s specific impact that demonstrates national importance.

In *Dhanasar*, 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. The Petitioner contends that his business plan establishes that his endeavor “will bring economic benefits that will further grow the United States economy by attracting foreign investment, employing U.S. workers, and helping all levels of government within the United States to collect taxes, whether through income taxation or business taxation.”

The Petitioner’s business plan includes market analysis, financial forecasts, projection of payroll expenses, generation of tax revenues, and a description of company management and staffing. The business plan contains a five-year projection for future staffing and anticipates that the company’s staff will grow from four employees in year one with a total payroll of \$220,000 to having 33 employees by year five, with a total payroll of \$1,747,436. The plan also projects the company’s profit to grow from \$115,937 in year one to \$7,265,595 by year five and the company’s sales will increase from 30 housing units in year two to 200 units in year five. However, the Petitioner does not adequately explain how these staffing numbers, profit projections, and sale forecasts were calculated. While the business plan indicates that it has growth potential, they lack corroborating evidence to support that benefits to the regional or national economy resulting from the Petitioner’s undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.*

The Petitioner also contends that his company will contribute to bringing affordable housing to the economically disadvantaged population. However, the Petitioner has not offered sufficient evidence that the areas in which he has purchased lands or plans to build residential or commercial properties are economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or real estate projects.

While the Petitioner contends that his proposed endeavor will bring substantial foreign investment activities to the nation using his connections in Brazil, he has not presented evidence that the prospective impact of the investment projects directed by his company represents a significant share of the Florida or U.S. real estate market. The recommendation letters show that some of the Petitioner’s former colleagues and business partners are interested in investing in his endeavor, but

the record does not contain evidence of steps taken to obtain such investment, contracts, or other corroborating documentation aside from his business plan.

Although the Petitioner's statements reflect his intention to provide valuable services for providing affordable housing, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Here, we find the record is insufficient in demonstrating that the Petitioner's proposed endeavor stands to extend beyond the community in Florida where he would build his housing to impact the construction industry or the U.S. housing more broadly at a level commensurate with national importance. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. 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 second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.