



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

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

In Re: 28423301

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a logistician, seeks classification as an individual of exceptional ability in the sciences, arts or business. *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. The Director did not address whether the Petitioner qualified for second-preference classification as either a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. However, the Director concluded 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 a member of the professions holding an advanced degree 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

As noted above, the Director did not address whether the Petitioner qualified for second-preference classification as either a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. *See* section 203(b)(2) of the Act. Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See id.*; *see also 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"); *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).

Initially, the Petitioner described the endeavor as a plan "to apply for the position of [d]irector of [o]perations or [f]inances [for his employer,] when the position opens." The Petitioner further stated that, "[i]n the meantime, [he] plans to apply to other large companies that have an impact across the U.S. including Sazerac, Brown Forman, Coca Cola [sic], Anheuser-Bush, and others"; however, the Petitioner did not elaborate on any particular position at those alternative companies for which he plans to apply. The Petitioner summarized his potential duties as director of operations or finances as follows:

- Providing analysis and good internal and external communication with clients.
- Maintaining and maximizing gross profit margin.
- Managing ROI (Return On Investment) programs, maintaining brand growth, and understanding how to maximize profit by choosing the size and volume of the product as the market [sic].
- Providing variance analysis for better performance.
- KPI creation (key performance indicators).
- Creating financial statements and gross profit reports as monthly forecasting.
- Working with suppliers and overseeing all supplier funds.
- Keeping the inventory low and avoiding out-of-stock issues.
- Using MicroStrategy, Alpha, Oracle, Vistaar, and Pocket advantage (computer programs that are required) to manage data.
- Anticipating problems and creating solutions.
- Identifying brands and creating new opportunities for them.

In response to the Director's notice of intent to deny (NOID), the Petitioner reasserted that he "intends to apply for the position of [d]irector of [o]perations or [f]inances at [redacted] when the position opens" and that "[i]n the meantime, [he] plans to apply to other large companies that have an impact across the U.S., including Sazerac, Brown Forman, Coca-Cola, Anheuser-Busch, and others." He stated that his "intention is to offer my services to U.S. companies, and help them to improve their financial and logistics sectors." The Petitioner also submitted generalized information regarding logistics and financial analysis.

The Director observed that "the [P]etitioner would be limited to serving the companies he will be potentially working with" but the record did not establish the endeavor "may potentially extend beyond the organization and its clients to impact the field more broadly." The Director also concluded that the record did not establish "the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects," referencing *Dhanasar*, 26 I&N Dec. at 890. The Director further noted that, because the record did not establish the proposed endeavor has national importance, addressing the second and third *Dhanasar* prongs "would serve no meaningful purpose." Likewise, the Director did not address whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See id.* at 889-90.

On appeal, the Petitioner asserts that his employer promoted him "to the position of [s]enior [a]nlyst," which "translates how important he is to [redacted]." The Petitioner also repeats information already in the record regarding his employment history, a performance award his employer gave him, and his development of "an inventory model to be implemented in all states [redacted] is in . . . [that] will enhance [the] company's services, increase their operations and the distribution capability [and enable] producers to get their products sold by retailers." The Petitioner also repeats information already in the record regarding the scope of his employer's business operation and its workforce size. The Petitioner asserts that he is "not only responsible to maintain the current 14,000 employees, but is essential to enable [redacted] [sic] to create jobs as long as its operation expands to new states and the jobs of those companies they provide their services." He further states that he "plays a critical role at [redacted] in distributing its client's [sic] products to large retailers in the United States, such as Costco, Total Wine, Walmart, and Kroger."

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 888-90.

In general, the Petitioner's focus on how important he may be and, by extension, how important his proposed endeavor may be to his employer and its clients is misplaced. As noted, *Dhanasar* contemplates endeavors that may have national importance as those that have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or other such broad implications that extend beyond benefitting a

petitioner's employer and its clients. *Id.* Although the Petitioner asserts on appeal that his recent promotion "translates how important he is to [redacted]," he does not support his assertion with credible evidence of how important his promotion above an entry-level position actually translates, such as information regarding the qualifications required for his new position, the number of other workers his employer also promoted to such a position during his two-year employment at the company, and similar details. In turn, the Petitioner's reassertions of information already in the record regarding a performance award his employer gave him and an inventory model he designed that his employer uses do not address how the prospective, proposed endeavor may have "national or even global implications within a particular field," extending beyond a particular employer, its clients, and the particular distribution chain. *See id.* Even if the record on appeal established "how important [the Petitioner] is to [his employer]," again, the focus of determining whether a proposed endeavor has national importance as contemplated by *Dhanasar* expands beyond an individual's importance to his own employer and its clients. *See id.*

Next, the Petitioner does not support his assertions on appeal regarding his responsibility for maintaining not only his employer's 14,000-employee workforce but also the workforces of his employer's suppliers and distributors with credible, supporting evidence. Although the Petitioner's employer and its suppliers and distributors may have maintained their workforce during the Petitioner's two-year employment at [redacted] the record does not establish how that correlation indicates a causal connection between the Petitioner's job performance and the other workers' continuing employment. Likewise, the record does not establish how the Petitioner's proposed, prospective endeavor of "apply[ing] for the position of [d]irector of [o]perations or [f]inances [for his employer, [redacted]] when the position opens," may have a causal connection to any employment trend among the respective companies. Moreover, the Petitioner's assertion that "[i]n the meantime, [he] plans to apply to other large companies that have an impact across the U.S. including Sazerac, Brown Forman, Coca Cola [sic], Anheuser-Bush, and others," conflicts with his assertion that his job performance at [redacted] has a causal connection to the respective companies' workforce trends. The record does not clarify what the implications of the Petitioner working for Sazerac, Brown Forman, Coca-Cola, or Anheuser-Bush "in the meantime" while he awaits a director of operations or finances position opening at [redacted] would be for its 14,000 employees or for its suppliers' and distributors' workforces, especially if his job performance at his existing employer has the causal nexus he asserts it has. Relatedly, although the Petitioner states on appeal that he "is essential . . . to create jobs" for his employer and its suppliers and distributors, the Petitioner does not provide further details regarding jobs he asserts he is essential to create for any particular entity, such as the number of positions, the type of positions, the wages for the positions, the locations where the employees would work, and other information that would assist in establishing whether the proposed endeavor has "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.*

Next, the Petitioner's assertion on appeal that he "plays a critical role at [redacted] in distributing its client's [sic] products to large retailers in the United States" in the context of determining whether the proposed endeavor may have national importance is misplaced. As addressed above, the first *Dhanasar* prong contemplates "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," beyond implications a proposed endeavor may have to an employer or its clients and suppliers. *Id.* Moreover,

we take administrative notice that the “large retailers in the United States” referenced by the Petitioner already sold his employer’s clients’ products before the date on which the Petitioner’s employer hired him, which casts doubt on how critical his personal role has been or will be for distributing his employer’s clients’ products to those retailers.

We further note that the Petitioner’s general premise on appeal of a zero-sum scenario disserves his assertions that the proposed endeavor may have substantial positive economic effects and, thus, national importance. *See id.* Specifically, on appeal the Petitioner presents the scenario as follows:

If one load is delayed or harmed by any incident, the products will not be on the shelves available to the customers. If products are not available, customers will look for similar options, and choose other brands. It has the potential to impact the overall results for those companies that rely on the distribution of their goods to [redacted]. A negative impact on the results may put some of the job positions at risk. [The Petitioner] is essential in maintaining employment in all companies [redacted] serves.

Although the Petitioner describes potential adverse consequences to his employer and its suppliers and distributors in the event of a problem within his employer’s supply chain, he also describes potential positive consequences to the suppliers and distributors within the supply chain of the “other brands” he references that customers would choose. Conversely, if the proposed endeavor would avert potential adverse consequences to his employer and its suppliers and distributors and, rather, cause positive consequences, it would also appear to cause the types of “negative impact on the results [that] may put some of the job positions at risk” for the suppliers and distributors within the supply chain of the “other brands.” In short, both distribution patterns appear to have the same types of positive and negative effects, and the primary difference is whether the Petitioner’s employer and its clients, or the competitors, would experience the positive or negative effects. We note that the record does not reconcile whether the potential positive economic effects for the Petitioner’s employer’s competitors in the event of a “negative impact on the results” for the Petitioner’s employer may actually equal or exceed the potential positive economic effects in the converse circumstances—rather, the Petitioner focuses on how the proposed endeavor would benefit his employer and its suppliers and distributors to the exclusion of their competitors and their employees. *See id.*

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 satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See Bagamashad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

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.