



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

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

In Re: 30631776

Date: APR. 10, 2024

Appeal of Texas Service Center Decision

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

Seeking to establish a production engineering consultancy in the United States, the Petitioner requests classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be “in the national interest.” *Id.*

The Director of the Texas Service Center denied the petition. The Director found that the Petitioner demonstrated eligibility for the requested EB-2 classification. But the Director concluded that the Petitioner did not establish the merits of a national interest waiver. On appeal, the Petitioner contends that the Director misapplied case law and disregarded evidence in finding insufficient proof that his proposed endeavor has “national importance.” He also asserts that, overall, a waiver's issuance would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not established that his proposed venture has national importance. We will therefore dismiss the appeal.

## I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding “advanced degrees” or their equivalents, or as noncitizens of “exceptional ability” in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term “national interest.” So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has “substantial merit” and “national importance;”
- They are “well positioned” to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

*Id.*

## II. ANALYSIS

### A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, obtained a bachelor’s degree in mechanical engineering and a master of business administration diploma in his home country. After receipt of his baccalaureate degree, he worked in the production engineering field in Brazil for about 20 years. He worked as a process engineer and industrial engineering coordinator for an automotive company until 2012. From 2012 to 2021, a glass company employed him as technical supervisor and production manager.

In the United States, the Petitioner plans to establish his own production engineering consulting business. The business would seek to maximize clients’ industrial production processes, perform in-depth process analyses, and help build effective solutions for customers’ operations. The Petitioner’s business plan projects that the company would employ seven people in its first year and 22 workers in its fifth year. Over the same period, the plan indicates that the business’s annual revenues would rise from \$396,000 to \$1,433,171.

### B. EB-2 Qualifications

The record supports the Director’s finding that the Petitioner qualifies for the EB-2 category as an advanced degree professional. He documented his receipt of the foreign equivalent of a U.S. bachelor’s degree in mechanical engineering, followed by more than five years of experience in the production engineering field. *See* 8 C.F.R. § 204.5(k)(2) (defining the term “advanced degree” to include a “United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty”).

### C. Substantial Merit

The record also supports the Director’s finding that the Petitioner’s proposed endeavor has substantial merit. A proposed undertaking may have substantial merit whether it “has the potential to create a significant economic impact” or relates to “research, pure science, and the furtherance of human knowledge.” *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner submitted evidence that his proposed venture could generate revenues and U.S. jobs and help small businesses to operate more efficiently, allowing them to prosper and grow. We therefore agree that the proposed endeavor has substantial merit.

#### D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its “potential prospective impact.” *Matter of Dhanasar*, 26 I&N Dec. at 889. “An 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.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. “An 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.*

The record supports the Director’s conclusion that the Petitioner submitted insufficient evidence that his proposed endeavor would substantially boost the economy or improve the production engineering field on a national level. The Petitioner has not demonstrated how the business’s projected 22 employees and \$1,433,171 in revenues would substantially affect the national economy. The record also does not establish that the consultancy would benefit an economically depressed area. Further, the Petitioner has not demonstrated how his business would advance the production engineering field.

Much of the Petitioner’s evidence of the proposed endeavor’s purported national importance consists of articles about engineering consulting and its benefits to businesses and the economy. As previously indicated, however, we must focus on the Petitioner’s *particular* venture. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (“The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.”) (emphasis added). The engineering consulting articles may demonstrate the field’s national importance. But the Petitioner has provided insufficient evidence that his *specific* endeavor would have national implications.

On appeal, the Petitioner contends that the Director incorrectly analyzed his proposed endeavor’s national importance. The Petitioner notes that *Dhanasar* changed the national interest waiver analysis, in part, by requiring an endeavor’s proposed benefits to have “national importance” rather than be “national in scope.” *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. *Dhanasar* states:

[W]e do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications. Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance. In modifying this prong to assess “national importance” rather than “national in scope,” as used in [*Matter of N.Y. State Dep’t of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm’r 1998)], we seek to avoid overemphasis on the geographic breadth of the endeavor.

*Id.* The Petitioner contends that the Director improperly focused on his proposed endeavor’s “geographical implications” and “lack of potential to employ U.S. workers.” He states that the Director disregarded other relevant factors, such as whether the endeavor would broadly enhance

societal welfare or would impact a matter that a government entity described as nationally important or that a national initiative supports. *See generally* 6 *USCIS Policy Manual* 7.(D)(5)(D)(1), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual).

The record, however, does not support the Petitioner's contentions. He does not specify any examples of the decision's purported focus on the endeavor's geographic breadth. Our reading of the decision does not indicate that the Director required the venture to have a national geographic scope. Rather, consistent with *Dhanasar*, the Director found insufficient evidence that the venture would "more broadly" affect the national economy or the production engineering field. *See Matter of Dhanasar*, 26 I&N Dec. at 893. For example, the Director's decision states: "Without sufficient documentary evidence of its *broader impact*, the petitioner's proposed endeavor does not meet the 'national importance' element." (emphasis added).

In *Dhanasar*, we found that a petitioner's proposal to teach science, technology, engineering, and mathematics (STEM) courses to university students lacked national importance. We did not base the decision on the proposal's lack of national, geographic scope. Rather, we found insufficient evidence "that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, the Director here did not base her national importance decision on lack of geographic scope, but rather on insufficient evidence of the endeavor's "broad" effects on the national economy and the production engineering field. The Petitioner's contentions therefore do not persuade us.

The Petitioner also argues:

[T]he presence of a professional with more than 20 years of professional experience and several courses accomplished overturns the erroneous argument that the petitioner would merely generate revenues for private companies and individuals. In fact, it actively creates financial bridges and prompts economic development that enhance and improve the functionality and monetary output of the nation's economy.

In determining national importance, however, USCIS does not consider a petitioner's professional experience. Rather, the Agency reviews a petitioner's education, training, and experience when determining whether they are well positioned to advance their proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. And, although the Petitioner claims that his business would create "financial bridges" and "economic development" enhancing the nation's economy, he has submitted insufficient evidence to explain his claims or support his work's purported effect on the national economy.

The Petitioner further argues that his proposed endeavor has national importance because it would provide "lean manufacturing solutions customized to customers' needs." He said that his business would aim to improve manufacturers' returns on investment while decreasing waste. The Petitioner states that the EPA [U.S. Environmental Protection Agency] encourages lean manufacturing methods because of their potential environmental benefits. For example, he says that businesses' elimination of unnecessary supplies benefits the environment by removing materials that could deteriorate or spoil over time, resulting in solid or hazardous waste.

The Director's request for additional evidence, however, asked the Petitioner to submit more argument and proof of his endeavor's claimed national importance and afforded him a reasonable opportunity to respond. We therefore decline to consider the endeavor's claimed environmental benefits for the first time on appeal. *See Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citation omitted). Also, even if we considered the issue, the record lacks sufficient evidence demonstrating that the Petitioner would persuade enough businesses to adopt lean manufacturing methods to nationally affect the environment.

For the foregoing reasons, the Petitioner has not demonstrated that his proposed endeavor has national importance. We will therefore affirm the petition's denial.

#### E. The Remaining Waiver Requirement

Our determination regarding the proposed endeavor's national importance resolves this appeal. We therefore decline to reach and hereby reserve the Petitioner's appellate argument regarding his endeavor's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

### III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. He therefore does not qualify for a national interest waiver, and we affirm the petition's denial for lack of a job offer.

**ORDER:** The appeal is dismissed.